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NOTES
ON THE
CONSTITUTION
OF THE
UNITED STATES
SHOWING THE
CONSTRUCTION AND OPERATION OF THE CONSTITUTION
AS DETERMINED BY THE FEDERAL
SUPREME COURT
AND CONTAINING
REFERENCES TO ILLUSTRATIVE CASES FROM THE
INFERIOR FEDERAL COURTS AND
STATE COURTS.

BY
WILLIAM A. SUTHERLAND,
OF THE CALIFORNIA BAR.

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PREFACE.

In the preparation of this work the object of the author has been, primarily, to determine and set forth the construction and operation of the constitution so far as it has been settled by the courts.

With this object in view the decisions have been carefully examined and the rules deduced from them arranged in their logical sequence, and apparently conflicting authorities have been harmonized. There has been an avoidance of all philosophical discussion of many questions which invited such treatment; all effort to show why the law is as it is or why it should not be as it is has been omitted.

The already familiar method of treating the constitution clause by clause has been followed as being most convenient for the practitioner. Judicial authority has been cited for every statement made, thus furnishing a wealth of decisions upon all points which have ever been disputed. It is believed that the method followed will commend itself to the profession.

While the federal supreme court is the final authority in all matters of constitutional construction, the decisions of the inferior federal courts and of the state courts should not be undervalued. The state reports have been freely resorted to, especially for decisions in support of rights claimed under the federal constitution and for illustrative cases construing similar clauses in state constitutions.

In a work of this scope and size it would be impracticable, even undesirable, to include all the decisions pertinent to a given point, and no attempt has been made to do so. Merely cumulative authorities of no especial illustrative importance have been omitted, and authorities have been multiplied only in instances where the cases are of considerable value. References will be found, however, to all the important cases, federal and state.

WILLIAM A. SUTHERLAND.

FRESNO, CAL., May, 1904.

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NOTES
ON THE
CONSTITUTION
OF THE
UNITED STATES.

TEXT OF THE CONSTITUTION.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2, Clause 1. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and

been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of election to fill such Vacancies.

5. The House of Representatives shall chuse their Speaker and other Officers, and shall have the sole Power of Impeachment.

Section 3, Clause 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years, and each Senator shall have one Vote.

2. Immediately after they shall be assembled in

consequence of the first Election, they shall be divided, as equally as may be, into three Classes. The Seats of the Senators of the first Class shall be vacated at the expiration of the second Year, of the second Class at the expiration of the fourth Year, and of the third Class at the expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen, by Resignation or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

5. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party con-

victed shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4, Clause 1. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5, Clause 1. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from Day to Day, and may be authorized to compel the Attendance of absent Members, in such Manner and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

3. Each House shall keep a Journal of its Proceedings, and from Time to Time publish the same, excepting such parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House, on any Question, shall, at the Desire of one-fifth of those present, be entered on the Journal.

4. Neither House during the Session of Congress shall, without the Consent of the other, adjourn for more than three Days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6, Clause 1. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to or returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such Time; and no Person holding any Office under the United States shall be a Member of either House during his continuance in Office.

Section 7, Clause 1. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be deter-

mined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

3. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8, Clause 1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2. To Borrow Money on the Credit of the United States;

3. To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes;

4. To establish a uniform Rule of Naturalization, and uniform Laws on the Subject of Bankruptcies, throughout the United States;

5. To coin Money, regulate the Value thereof and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of Counterfeiting the Securities and Current Coin of the United States;

7. To establish Post-offices and Post-roads;

8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the Supreme Court;

10. To define and punish Felonies committed on the high Seas, and Offenses against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make rules concerning Captures on Land and Water;

12. To raise and support Armies; but no Appropriation of Money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the Land and Naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions;

16. To provide for organizing, arming, and disciplining the Militia, and for governing such part of them as may be employed in the Service of the United States, reserving to the States respectively the Appointment of the officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and

the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;

Section 9, Clause 1. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

3. No Bill of Attainder or ex post facto Law shall be passed.

4. No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

7. No Money shall be drawn from the Treasury, but

in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. No Title of Nobility shall be granted by the United States: and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10, Clause 1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

Section 1, Clause 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3. ["The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the

five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.”]

This Clause has been superseded by the twelfth amendment.

4. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

5. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

6. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly,

until the Disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

8. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2, Clause 1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress

may by Law vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2, Clause 1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3, Clause 1. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2, Clause 1. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

3. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3, Clause 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be

as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

Go: WASHINGTON—

Presidt. and Deputy from Virginia

New Hampshire.

John Langdon

Nicholas Gilman

Massachusetts.

Nathaniel Gorham Rufus King

Connecticut.

Wm. Saml. Johnson Roger Sherman

New York.

Alexander Hamilton

New Jersey.

Wil: Livingston Wm. Paterson
David Brearley Jona: Dayton

Pennsylvania.

B. Franklin Thos. Fitzsimons
Thomas Mifflin Jared Ingersoll
Robt. Morris James Wilson
Geo. Clymer Gouv Morris

Delaware.

Geo: Read Richard Bassett
Gunning Bedford Jun Jaco: Broom
John Dickinson

Maryland.

James McHenry Danl. Carroll
Dan of St Thos Jenifer

Virginia.

John Blair— James Madison Jr.

North Carolina.

Wm. Blount Hu Williamson.
Richd. Dobbs Spaight

South Carolina.

J. Rutledge,	Charles Pinckney
Charles Cotesworth Pinckney	Pierce Butler.

Georgia.

William Few	Abr Baldwin.
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Attest WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[ARTICLE XII.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same

state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Sen-

ate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial

officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

INTRODUCTORY.

Constitutional Construction—General Rules.

Broadly speaking, a constitution is an instrument of government made and adopted by the people for practical purposes.¹ The constitution of the United States is a grant of power.² It should be construed so as best to subserve the great objects for which it was made,³ and, like every other grant of power, should have a reasonable construction according to its terms,⁴ as defined in the vocabulary of the people which adopted it.⁵ The safest rule for interpreting the constitution is to look to the nature and objects of the particular powers, duties and rights, with all the aids of contemporary history, and to give to the words of each just such operation and force consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.⁶ The very object of constitutional construction is to give effect to the intention of the framers of the instrument, and to the intent of the people in adopting it,⁷ and this intent, together with the general scope of the particular provision, is to be kept constantly in view.⁸

¹ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

² *Spooner v. McConnell*, 1 McLean, 337, Fed. Cas. No. 13,245; *United States v. Cathcart*, 1 Bond, 556, Fed. Cas. No. 14,756; *Page v. Allen*, 58 Pa. St. 338, 98 Am. Dec. 272; *State v. Moore*, 40 Neb. 854, 59 N. W. 755, 25 L. R. A. 774.

³ *Jarrolt v. Moberly*, 103 U. S. 586, 26 L. ed. 492; *North River S. Co. v. Livingston*, 3 Cow. 713; *Hague v. Powers*, 39 Barb. 427; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

⁴ *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97; *Woodson v. Murdock*, 22 Wall. 369, 22 L. ed. 716; *Fairbank v. United States*, 181 U. S. 289, 21 S. Ct. 648, 45 L. ed. 862.

⁵ *Kunzler v. Kohans*, 5 Hill, 317; *Padelford v. Mayor*, 14 Ga. 438.

⁶ *Prigg v. Commonwealth*, 16 Pet. 610, 10 L. ed. 1060.

⁷ *Lake County v. Rollins*, 130 U. S. 670, 9 S. Ct. 651, 32 L. ed. 1060.

⁸ *Gibbons v. Ogden*, 9 Wheat. 188, 6 L. ed. 23; *Ogden v. Saunders*, 12 Wheat. 332, 6 L. ed. 606; *Brown v. Maryland*, 12 Wheat. 437, 6

No court is authorized to so construe a clause of the constitution as to defeat its obvious ends, when another construction, equally accordant with the words and sense, will enforce and protect those ends;⁹ accordingly, where words admit of different intendments, that must be selected which is most consonant to the object in view.¹⁰ If a case is within the letter of the constitution it is not to be excluded from its meaning by showing that it was not in the minds of those who framed and adopted it; it is further necessary to show that, had the case been suggested, the language would have been changed so as to except it.¹¹ It must receive a practical construction,¹² and is not to be viewed technically.¹³ Its terms are not to be nullified or evaded by astute verbal criticism without regard to the aim and objects of the instrument and the principles on which it was based.¹⁴ It should be so construed as to give effect to its different clauses, as far as possible to reconcile them and not allow their seeming repugnancy to destroy them.¹⁵

The rule of construction that what is implied is as much a part of an instrument as what is expressed, applies to the federal constitution, because of the inherent inability to put into words all derivative powers;¹⁶ but a court has no right to insert anything in the constitution which is not expressed and cannot fairly be implied,¹⁷ and when the text of a constitutional provision is not ambiguous, the courts are not at liberty to

L. ed. 678; *McCulloch v. Maryland*, 4 Wheat. 415, 4 L. ed. 579; *Groves v. Slaughter*, 15 Pet. 500, 10 L. ed. 800; *Ex parte Yerger*, 8 Wall. 101, 19 L. ed. 332; *Lake County v. Rollins*, 130 U. S. 670, 9 S. Ct. 651, 32 L. ed. 1060.

⁹ *Prigg v. Commonwealth*, 16 Pet. 612, 10 L. ed. 1060.

¹⁰ *Aldrich v. Kinney*, 4 Conn. 380, 10 Am. Dec. 151.

¹¹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 644, 4 L. ed. 629.

¹² *Railroad Co. v. Peniston*, 18 Wall. 31, 21 L. ed. 787.

¹³ *People v. Dawell*, 25 Mich. 247, 12 Am. Rep. 260; *Dormon v. State*, 34 Ala. 216.

¹⁴ *Passenger Cases*, 7 How. 283, 12 L. ed. 702.

¹⁵ *Cohens v. Virginia*, 6 Wheat. 395, 5 L. ed. 257; *Marbury v. Madison*, 1 Cr. 138, 2 L. ed. 60.

¹⁶ *Ex parte Yarbrough*, 110 U. S. 658, 4 S. Ct. 152, 28 L. ed. 274.

¹⁷ *Prigg v. Commonwealth*, 16 Pet. 613, 10 L. ed. 1060.

search for its meaning beyond the instrument itself.¹⁸ Affirmative words often imply a negative of other objects than those affirmed,¹⁹ and an exception of any particular case presupposes that those which are not excepted are embraced within the grant or prohibition; so where no exception is made in terms, none will be made by implication or construction.²⁰

The scope and effect of a constitutional provision is often best ascertained by bearing in mind what the law was before,²¹ and a provision afterward changed by amendment should be considered in construing the amendment.²² The history of the time when a provision was framed and adopted should be examined to determine the old law, the mischief and the remedy,²³ and where it is undoubted that the object of a clause was to incorporate into the instrument certain principles which had become permanently fixed in the law of the mother country, the construction of those principles by the English courts is useful in determining their scope.²⁴ The construction of many clauses of the constitution must be had in the light of the common law,²⁵ unless by a series of decisions by the supreme court and the construction placed upon a particular clause by Congress the words have been considered as having a meaning different from that given to them by the common law.²⁶

Decisions deliberately considering a constitutional provision should be looked to,²⁷ and contemporary practical construction of the constitution by Congress and persons intrusted with its

¹⁸ *Lake County v. Rollins*, 130 U. S. 670, 9 S. Ct. 651, 32 L. ed. 1060.

¹⁹ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60.

²⁰ *Rhode Island v. Massachusetts*, 12 Pet. 722, 9 L. ed. 1233.

²¹ *Ex parte Wilson*, 114 U. S. 422, 5 S. Ct. 935, 29 L. ed. 80; *Mattox v. United States*, 156 U. S. 243, 15 S. Ct. 337, 39 L. ed. 409.

²² *Fletcher v. Peck*, 6 Cr. 139, 3 L. ed. 162.

²³ *Rhode Island v. Massachusetts*, 12 Pet. 723, 9 L. ed. 1233; *Craig v. Missouri*, 4 Pet. 432, 7 L. ed. 903; *Missouri v. Illinois*, 180 U. S. 219, 21 S. Ct. 331, 45 L. ed. 497.

²⁴ *Brown v. Walker*, 161 U. S. 591, 16 S. Ct. 644, 40 L. ed. 819.

²⁵ *United States v. Wong Kim Ark*, 169 U. S. 654, 18 S. Ct. 456, 42 L. ed. 890.

²⁶ *The Huntress*, 2 Ware (Dav. 82), 89, Fed. Cas. No. 6914.

²⁷ *Missouri v. Illinois*, 180 U. S. 219, 21 S. Ct. 331, 45 L. ed. 497.

execution is of great weight in construing its provisions,²⁸ especially where there has been long acquiescence in such construction, and rights have been acquired in reliance thereon.²⁹ It is only in cases of doubt and ambiguity, however, that this weight attaches to practical construction of constitutional provisions.³⁰ But the fact that practical construction, long continued, has been uniformly abandoned does not detract from its value as an aid to judicial construction.³¹

The arguments of individual legislators cannot dictate the construction to be put on the constitution by the courts,³² nor can congressional debates with reference to a proposed constitutional amendment furnish any firm ground for its proper construction.³³

The courts can only construe the powers granted; they cannot inquire into the policy or principles which induced a grant,³⁴ nor can the question of expediency or hardship determine the construction of a constitutional provision.³⁵

²⁸ *Cohens v. Virginia*, 6 Wheat. 420, 5 L. ed. 257; *Ogden v. Saunders*, 12 Wheat. 290, 6 L. ed. 606; *Wilkinson v. Leland*, 2 Pet. 657, 7 L. ed. 542; *Cooley v. Board of Wardens*, 12 How. 315, 13 L. ed. 996; *Den v. Hoboken Land etc. Co.*, 18 How. 280, 15 L. ed. 372; *Propeller Genessee Chief v. Fitzhugh*, 12 How. 458, 13 L. ed. 1058.

²⁹ *McCulloch v. Maryland*, 4 Wheat. 401, 4 L. ed. 579; *Veazie Bank v. Fenno*, 8 Wall. 541, 19 L. ed. 482; *Burrow etc. Lith. Co. v. Sarony*, 111 U. S. 57, 4 S. Ct. 279, 28 L. ed. 349; *The Laura*, 114 U. S. 416, 5 S. Ct. 881, 29 L. ed. 147; *Field v. Clark*, 143 U. S. 691, 12 S. Ct. 495, 36 L. ed. 294.

³⁰ *McPherson v. Blacker*, 146 U. S. 27, 13 S. Ct. 1, 36 L. ed. 869; *Fairbank v. United States*, 181 U. S. 310, 21 S. Ct. 648, 45 L. ed. 862.

³¹ *McPherson v. Blacker*, 146 U. S. 27, 13 S. Ct. 1, 36 L. ed. 869.

³² *Downs v. Bidwell*, 182 U. S. 254, 21 S. Ct. 770, 45 L. ed. 1088.

³³ *Maxwell v. Dow*, 176 U. S. 601, 20 S. Ct. 448, 44 L. ed. 597.

³⁴ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

³⁵ *Watkins v. Holman*, 16 Pet. 62, 10 L. ed. 873; *Legal Tender Cases*, 12 Wall. 540, 20 L. ed. 287; *Buchanan v. Litchfield*, 102 U. S. 293, 26 L. ed. 138; *The Benito Estenger*, 176 U. S. 575, 20 S. Ct. 489, 44 L. ed. 592; *Louisville etc. Ry. v. Kentucky*, 183 U. S. 512, 22 S. Ct. 95, 46 L. ed. 298.

— **Meaning of Words.**

In construing the constitution, the intention of the instrument is to prevail, and this intention is to be collected chiefly from its words understood in their ordinary sense;³⁶ reference is to be had to the literal meaning of the words to be expounded, their connection with other words, and the general objects to be accomplished.³⁷ Although the spirit of an instrument is to be respected not less than its letter, yet, as has been said, the spirit is to be collected chiefly from its words; it cannot be inferred from extrinsic circumstances that a case for which the words expressly provide shall be exempted from its operation.³⁸ The argument of inconvenience cannot prevail over plain words, but a construction which would necessarily occasion public or private mischief must yield to a construction which will occasion neither.³⁹ A case within the words of a rule must be deemed within its operation unless something in the literal construction is so obviously absurd or mischievous, or so repugnant to the spirit of the instrument as to justify an exception.⁴⁰

Words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.⁴¹ Adherence to the letter must not be had in opposition to the reason and spirit of the constitution, and to effectuate the objects intended, it may be proper to deviate from the usual sense of the words.⁴² Every word must have its due force and appropriate meaning,

³⁶ *Ogden v. Saunders*, 12 Wheat. 332, 6 L. ed. 606; *Gibbons v. Ogden*, 9 Wheat. 188, 6 L. ed. 23.

³⁷ *Brown v. Maryland*, 12 Wheat. 437, 6 L. ed. 678; *Miller v. Dunn*, 72 Cal. 462, 1 Am. St. Rep. 67, 14 Pac. 27.

³⁸ *Sturges v. Crowninshield*, 4 Wheat. 202, 4 L. ed. 529; *Cohens v. Virginia*, 6 Wheat. 380, 5 L. ed. 257.

³⁹ *Ex parte Griffin*, Chase, 364, Fed. Cas. No. 5815; *Baltimore v. State*, 15 Md. 376.

⁴⁰ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Houston v. Moore*, 5 Wheat. 1, 5 L. ed. 19; *Briscoe v. Bank of Kentucky*, 11 Pet. 257, 9 L. ed. 709; *Cooley v. Board of Wardens*, 12 How. 299, 13 L. ed. 996.

⁴¹ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Miller v. Dunn*, 72 Cal. 462, 1 Am. St. Rep. 67, 14 Pac. 27.

⁴² *Aldrich v. Kinney*, 4 Conn. 380, 10 Am. Dec. 151.

and no word should be rejected as unmeaning;⁴³ and care should be taken to reconcile words apparently inconsistent, in such a manner as to give, if possible, a meaning to every word;⁴⁴ it cannot be assumed that any part of the language used is superfluous.⁴⁵ The same words have not necessarily the same meaning when found in different parts of the constitution, and the peculiar sense in which a word is used is to be determined by the context,⁴⁶ unless the meaning is completely ascertained.⁴⁷ Where it appears that the framers used a word in a particular sense generally throughout the instrument, it will be given that sense wherever it occurs.⁴⁸ While affirmative words are often negative of other objects than those affirmed, they should not be construed negatively where they can operate fully without such construction.⁴⁹

— Operation of Constitution.

The United States constitution is supreme over all the departments of the national government, and, to the extent of the powers delegated, over all who made themselves parties to it, states as well as persons; it is supreme over the people of the United States aggregately and in their separate sovereignties.⁵⁰ It constitutes a part of the law of each state, and is binding upon the people and authorities of the state.⁵¹

A constitution will always be deemed to operate prospectively

⁴³ *Holmes v. Jennison*, 14 Pet. 540, 10 L. ed. 579; *Hitchcock v. Aiken*, 1 Caines, 460; *State v. Scott*, 9 Ark. 270.

⁴⁴ *Curtis v. Gibbs*, 2 N. J. L. 405.

⁴⁵ *Hurtado v. California*, 110 U. S. 534, 4 S. Ct. 111, 292, 28 L. ed. 232.

⁴⁶ *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. ed. 25; *Wheaton v. Peters*, 8 Pet. 591, 8 L. ed. 1055; *Brown v. Maryland*, 12 Wheat. 437, 6 L. ed. 678.

⁴⁷ *United States v. Burr*, 2 Whart. Cr. Cas. 573.

⁴⁸ *Green v. Weller*, 32 Miss. 652.

⁴⁹ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60; *Cohens v. Virginia*, 6 Wheat. 395, 5 L. ed. 257.

⁵⁰ *Dodge v. Woolsey*, 18 How. 347, 15 L. ed. 401.

⁵¹ *National Bank v. Dearing*, 91 U. S. 35, 23 L. ed. 196; *State v. Conlon*, 65 Conn. 478, 48 Am. St. Rep. 227, 33 Atl. 519, 31 L. R. A. 55.

unless a contrary intention clearly appears.⁵² A constitutional provision which is complete in itself is self-executing.⁵³ The general principles of the constitution are merely declaratory and directory, and not meant to fetter and control.⁵⁴

⁵² *Shreveport v. Cole*, 129 U. S. 43, 9 S. Ct. 210, 32 L. ed. 589.

⁵³ *Davis v. Burke*, 179 U. S. 403, 21 S. Ct. 210, 45 L. ed. 249.

⁵⁴ *Cooper v. Telfair*, 4 Dall. 18, 1 L. ed. 721.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The People of the United States.

This phrase contemplates the body of electors composing the states,¹ the terms "people" and "citizens" being synonymous, and both describing the political body who, under our republican institutions, form the sovereignty, hold the power, and conduct the government through their representatives; the "sovereign people," of which every citizen is a constituent member.² Negroes, whether free or slaves, were not included in the term "people of the United States."³

The constitution was ordained and established, not by the states, but by the people of the United States;⁴ the people bear the sovereignty of the nation.⁵ The United States government is truly a government of the people; in form and substance it emanates from them.⁶ It was competent for them to invest that government with all the powers they might deem proper, and to give it supreme authority,⁷ and they may resume or modify the powers granted at their pleasure.⁸

1 Penhallow v. Doane, 3 Dall. 93, 1 L. ed. 507.

2 Dred Scott v. Sandford, 19 How. 404, 15 L. ed. 691.

3 Dred Scott v. Sandford, 19 How. 404, 406, 411-427, 477, 15 L. ed. 691.

4 Martin v. Hunter, 1 Wheat. 324, 4 L. ed. 97.

5 Chisholm v. Georgia, 2 Dall. 471, 1 L. ed. 440.

6 McCulloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579.

7 Martin v. Hunter, 1 Wheat. 325, 4 L. ed. 97.

8 McCulloch v. Maryland, 4 Wheat. 404, 4 L. ed. 579.

More Perfect Union.

The people, through the constitution, established a more perfect union by establishing a national government acting directly upon the citizens, in the place of the government existing under the Articles of Confederation, which acted with powers greatly restricted and only on the states.⁹ The phrase recognizes a political body known as the United States.¹⁰ This union of the states is not a purely arbitrary and artificial relation; it began among the colonies, and received definite form and character and sanction from the Articles of Confederation, and was only perfected by the constitution.¹¹ The Articles of Confederation merely constituted a league of friendship, and did not form a constitution or ordinance of government.¹²

It is the union of the states under a common constitution which forms the distinct and greater political unit designated as the United States,¹³ by a compact made by the people of the United States to govern themselves as to general objects in a certain manner;¹⁴ a government emanating from the people,¹⁵ the creation of their will and existing only by their will.¹⁶ For many purposes it is a consolidated government, a nation;¹⁷ a body politic and corporate,¹⁸ and for all these purposes it is

⁹ *Lane County v. Oregon*, 7 Wall. 76, 19 L. ed. 101; *Collector v. Day*, 11 Wall. 125, 20 L. ed. 122.

¹⁰ *Texas v. White*, 7 Wall. 727, 19 L. ed. 227.

¹¹ *Texas v. White*, 7 Wall. 727, 19 L. ed. 227.

¹² *Wharton v. Wise*, 153 U. S. 167, 14 S. Ct. 783, 38 L. ed. 669.

¹³ *Texas v. White*, 7 Wall. 721, 19 L. ed. 227.

¹⁴ *Chisholm v. Georgia*, 2 Dall. 463. 1 L. ed. 440.

¹⁵ *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579.

¹⁶ *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257.

¹⁷ *Cohens v. Virginia*, 6 Wheat. 413, 5 L. ed. 257; *North River S. Co. v. Livingston*, 3 Cow. 713.

¹⁸ *Dugan v. United States*, 3 Wheat. 172, 4 L. ed. 362; *United States v. Tingey*, 5 Pet. 128, 8 L. ed. 66; *United States v. Bradley*, 10 Pet. 343, 9 L. ed. 448; *Neilson v. Lagow*, 12 How. 108, 13 L. ed. 909; *Dixon v. United States*, 1 Brock. 177, Fed. Cas. No. 3934; *United States v. Maurice*, 2 Brock. 109, Fed. Cas. No. 15,747; *United States v. Lane*, 3 McLean, 365, Fed. Cas. No. 1559; *Stearns v. United States*, 2 Paine, 301, Fed. Cas. No. 13,341. See, also, *Republic of Honduras v. Soto*, 112 N. Y. 310, 8 Am. St. Rep. 744, 19 N. E. 845, 2 L. R. A. 642.

supreme.¹⁹ It is a government of delegated powers only, with powers limited in number but not in degree, and is supreme within the scope of its delegated powers.²⁰

Ordained and Established.

The constitution was ordained and established by the people, for themselves and their own government, and not for the government of the individual states.²¹ It was not established by the states, but by the people of the United States,²² acting through delegates by whom they were represented.²³ The adoption of the constitution was neither by the people nor the states; the vote of the people was limited to the respective states in which they resided, thus combining an expression of popular suffrage and state sanction.²⁴

The constitution went into effect on the first Wednesday in March, 1789.²⁵

¹⁹ *Cohens v. Virginia*, 6 Wheat. 413, 5 L. ed. 257; *Lane County v. Oregon*, 7 Wall. 76, 19 L. ed. 101; *Chinese Exclusion Case*, 130 U. S. 604, 9 S. Ct. 623, 32 L. ed. 1068; *In re Quarles*, 158 U. S. 535, 15 S. Ct. 959, 39 L. ed. 1080.

²⁰ *Martin v. Hunter*, 1 Wheat. 363, 4 L. ed. 97; *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Dobbins v. Commissioners of Erie County*, 16 Pet. 447, 10 L. ed. 1022; *Ableman v. Booth*, 21 How. 517, 16 L. ed. 169; *Legal Tender Cases*, 12 Wall. 533, 20 L. ed. 287; *Kohl v. United States*, 91 U. S. 372, 23 L. ed. 449; *United States v. Cruikshank*, 92 U. S. 550, 23 L. ed. 588; *In re Debs*, 158 U. S. 578, 15 S. Ct. 900, 39 L. ed. 1092.

²¹ *Barron v. Baltimore*, 7 Pet. 243, 8 L. ed. 672; *Withers v. Buckley*, 20 How. 84, 15 L. ed. 816; *Twitchell v. Commonwealth*, 7 Wall. 326, 19 L. ed. 223; *United States v. Cruikshank*, 92 U. S. 550, 23 L. ed. 588.

²² *Chisholm v. Georgia*, 2 Dall. 463, 1 L. ed. 440; *Martin v. Hunter*, 1 Wheat. 324, 4 L. ed. 97.

²³ *Worcester v. Georgia*, 6 Pet. 569, 8 L. ed. 483; *Barron v. Baltimore*, 7 Pet. 243, 8 L. ed. 672.

²⁴ *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *Chisholm v. Georgia*, 2 Dall. 419, 1 L. ed. 440; *Worcester v. Georgia*, 6 Pet. 569, 8 L. ed. 483.

²⁵ *Owings v. Speed*, 5 Wheat. 420, 5 L. ed. 124.

ARTICLE I.**LEGISLATIVE DEPARTMENT.****SECTION 1.****LEGISLATIVE POWER, CONGRESS.**

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The "legislative power" means the power or authority, under the constitution, or frame of government, to make, alter or repeal laws.¹ The three co-ordinate branches of the federal government possess powers, in their respective spheres, coextensive with each other,² but these powers, while coextensive, are distinct and independent,³ and one branch of government cannot encroach upon the powers confided to another.⁴

No judicial power is vested in Congress by the constitution, save in cases specially enumerated;⁵ its powers are confined to legislative duties, and restricted within certain prescribed limits.⁶

¹ O'Neil v. American etc. Ins. Co., 166 Pa. St. 72, 45 Am. St. Rep. 650, 30 Atl. 943, 26 L. R. A. 715.

² Worcester v. Georgia, 6 Pet. 570, 8 L. ed. 482.

³ Sinking Fund Cases, 99 U. S. 713, 25 L. ed. 504.

⁴ Hayburn's Case, 3 Dall. 409, note, 1 L. ed. 436; Kilbourn v. Thompson, 103 U. S. 168, 26 L. ed. 377.

⁵ Kilbourn v. Thompson, 103 U. S. 168, 26 L. ed. 377.

⁶ Gordon v. United States, 117 U. S. 705.

SECTION 2.

HOUSE OF REPRESENTATIVES.

1. Members, when and by whom chosen.
2. Qualifications.
3. Apportionment of Representatives, and direct taxes.
4. Vacancies.
5. Speaker. Impeachment.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Electors.

Although this clause adopts state qualifications of electors as those of electors for members of Congress, the right, thus ascertained, is not made dependent upon state laws, but is based upon the constitution.¹ Accordingly, Congress has power to interfere to protect the right to vote for congressmen,² and this power does not depend upon the fourteenth and fifteenth amendments.³ It is for the states alone to determine who shall be entitled to vote,⁴ but once the right has been granted, and so long as it extends to voting for state officers, a state cannot deprive electors of the right to vote at national elections.⁵ And where the possession of a registry certificate constitutes a person a legal voter, no action of the election board or of any other power can invalidate his right.⁶

¹ *Ex parte Yarbrough*, 110 U. S. 651, 4 S. Ct. 152, 28 L. ed. 274.

² *United States v. Goldman*, 3 Woods, 187, Fed. Cas. No. 15,225.

³ *United States v. Crosby*, 1 Hughes, 448, Fed. Cas. No. 14,893.

⁴ *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588; *McPherson v. Blacker*, 146 U. S. 38, 13 S. Ct. 12, 36 L. ed. 869; *Huber v. Reily*, 53 Pa. St. 112.

⁵ *United States v. Goldman*, 3 Woods, 187, Fed. Cas. No. 15,225.

⁶ *Bell v. Snyder*, Smith, 250.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives.

A representative is a member of Congress with full powers.¹ The office of territorial delegate is not provided for in the constitution; it grew out of the ordinance of Congress for the government of the Northwest Territory.² While delegates are members of Congress,³ they are admitted merely as a matter of favor,⁴ and possess only limited powers.⁵ Delegates are so far the mere creatures of law that their term of office may commence and terminate at such periods as Congress may direct,⁶ and their qualifications are those which the House in any particular Congress may choose to prescribe; one Congress cannot bind another in this respect.⁷ If, however, no qualifications have been prescribed, they are to be deemed the same as those prescribed by the constitution for members of the House.⁸

Qualifications Generally.

This clause fixes the qualifications of members so far as state action is concerned, and no additional qualifications can be required by the state.⁹ So state laws prescribing residence as to

¹ Cannon v. Campbell, 2 Ells. 652.

² Biddle v. Richard, Cl. & H. 407.

³ Cannon v. Campbell, 2 Ells. 652.

⁴ Ruder v. Whitfield, 1 Bart. 204.

⁵ Cannon v. Campbell, 2 Ells. 652.

⁶ Doty v. Jones, 1 Bart. 18.

⁷ Cannon v. Campbell, 2 Ells. 604.

⁸ Maxwell v. Cannon, Smith, 188.

⁹ Barney v. McCreery, Cl. & H. 167; Turney v. Marshall and Fouke v. Trumbull, 1 Bart. 167; State v. Russell, 8 Ohio N. P. 54, 10 Ohio S. & C. P. Dec. 255.

counties within congressional districts are void;¹⁰ and a clause in a state constitution providing that judges of certain courts shall not be eligible to any office of public trust or profit in the state or the United States cannot deprive a member-elect of his right to his seat.¹¹

The negative declaration of minimum qualifications in this clause is not exclusive of all others which may be required by Congress itself.¹² Disloyalty is deemed to be a disqualification;¹³ but the alleged disloyalty must have been actual and not merely technical,¹⁴ and acceptance of membership in a seceding legislature by a person in fact loyal was held not to render a person ineligible.¹⁵ Disloyal acts prior to the complete annexation of Hawaii were declared not to deprive a delegate-elect of his right to his seat.¹⁶ The Test Oath Act of 1862 imposed a real and substantial disqualification for membership,¹⁷ and its constitutionality has always been asserted.¹⁸ Polygamy is a disqualification.¹⁹ Insanity, crime or loathsome disease would probably be held to disqualify a member-elect should such a question be presented.²⁰

The disqualification of a member-elect does not entitle the next highest candidate to the seat.²¹

¹⁰ *Barney v. McCreery*, Cl. & H. 167.

¹¹ *Turney v. Marshall* and *Fouke v. Trumbull*, 1 Bart. 167; *Wood v. Peters*, Mobley, 79.

¹² *Roberts' Case*, Rep. 85, 56th Cong., 1st Sess.

¹³ *McKee v. Young*, 2 Bart. 422; *Christy v. Wimpy*, 2 Bart. 465; *Smith v. Brown*, 2 Bart. 395.

¹⁴ *Tucker v. Booker*, 2 Bart. 772.

¹⁵ *Butler's Case*, 2 Bart. 461.

¹⁶ *Wilcox's Case*, Rep. 3001, 56th Cong., 2d Sess.

¹⁷ *Roberts' Case*, *supra*.

¹⁸ *McKee v. Young*, 2 Bart. 450; *Smith v. Brown*, 2 Bart. 395; *Butler's Case*, 2 Bart. 464.

¹⁹ *Roberts' Case*, *supra*; *Cannon v. Campbell*, 2 Ells. 604.

²⁰ *Roberts' Case*, *supra*.

²¹ *Smith v. Brown*, 2 Bart. 395; *Blakey v. Golladay*, 2 Bart. 417; *Christy v. Wimpy*, 2 Bart. 464; *Jones v. Mann*, 2 Bart. 471.

Citizens.

The word "citizen" is not synonymous with "resident."²² A citizen is a member of the nation, owing allegiance thereto and entitled to protection therefrom;²³ a member of the political community to which he belongs.²⁴ A minor who left the colonies for Europe for his education before the Revolution, and whose parents died before the Revolution, did not lose his citizenship, and upon his return, after his majority, was eligible to election to Congress.²⁵ Where the citizenship of a claimant is questioned, the leaning should always be in his favor.²⁶ Technical rules should not be applied to deprive a member of his seat where the fact of naturalization has been proved.²⁷

Inhabitants.

An inhabitant is a bona fide member of the state, subject to all the requisitions of its laws, and entitled to all the privileges and advantages which they confer.²⁸ "Inhabitant" is to be distinguished from "citizen"; the former comprehends simply locality of existence; the latter a combination of civil privileges, some of which may be enjoyed in any of the states of the Union.²⁹ Actual residence in the state is not always necessary to constitute a person an inhabitant; the capacity in which a foreign minister acts excludes the idea that he ceases to be an inhabitant of the United States, and he must be deemed to be in the same situation as to inhabitancy as before his appointment.³⁰ So, also, a person having his place of business in Washington, D. C., but his declared residence in a state, where he resides only a portion of the year, is eligible to election from that state.³¹ But a person who had resided in Washington for years,

²² *Robertson v. Cease*, 97 U. S. 648, 24 L. ed. 1057; *Zambrino v. Galveston etc. Ry.*, 38 Fed. 453; *Hewitt v. Story*, 64 Fed. 523.

²³ *Minor v. Happersett*, 21 Wall. 166, 22 L. ed. 627.

²⁴ *United States v. Cruikshank*, 92 U. S. 549, 23 L. ed. 588.

²⁵ *Ramsay v. Smith*, Cl. & H. 23.

²⁶ *Levy's Case*, 1 Bart. 41.

²⁷ *Lowry v. White, Mobley*, 623.

²⁸ *Bailey's Case*, Cl. & H. 411.

²⁹ *Bailey's Case*, Cl. & H. 411.

³⁰ *Forsyth's Case*, Cl. & H. 497.

³¹ *Key's Case*, Cl. & H. 221.

and went to his former home as secretary to the military governor a few months before his election, was held ineligible.³³ Voting citizenship is not essential to constitute a person an inhabitant;³³ nor does the acquisition of a voting citizenship in another state render a person ineligible upon his return to his previous residence with an intention to remain there.³⁴

³³ *Pigott's Case*, 1 Bart. 463, 464.

³³ *Bailey v. Barbour*, 2 Ells. 679.

³⁴ *Upton's Case*, 1 Bart. 369.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Construction.

The object of this clause was to furnish a basis for the apportionment of representation and federal taxation; it does not contemplate the exemption of any state from its rightful share of the burden or make taxation dependent upon representation.¹ It does not apply to the District of Columbia or the territories.²

Apportionment.

The question as to when the apportionment provided for by Congress shall go into effect, is legislative rather than judicial, and courts cannot afford redress when the act appears to be un-

¹ *Loughborough v. Blake*, 5 Wheat. 317, 5 L. ed. 98.

² *Loughborough v. Blake*, 5 Wheat. 311, 5 L. ed. 98; *Gibbins v. District of Columbia*, 116 U. S. 404, 6 S. Ct. 427, 29 L. ed. 680.

just.³ This clause does not contemplate that under all circumstances Congress shall have power to divide the states into districts; it merely provides a means for the representation of a state when the state itself has failed to make such provision.⁴ Under the apportionment of 1850, Virginia being entitled to eleven representatives, when West Virginia was admitted Virginia was entitled to but eight.⁵ The Apportionment Act of California, of March 13, 1883, is valid.⁶ The apportionment under the eighth census went into effect March 3, 1863.⁷

Direct Taxes.*

This term includes capitation taxes and direct taxes upon land,⁸ and upon personalty.⁹

³ *State v. Boyd*, 36 Neb. 181, 54 N. W. 252, 19 L. R. A. 227.

⁴ *Davison v. Gilbert*, Rep. 3000, 56th Cong., 2d Sess.

⁵ *Segar's Case*, 2 Bart. 810.

⁶ *California Case*, Mobley, 481.

⁷ *Lowe's Case*, 1 Bart. 448.

⁸ *Hylton v. United States*, 3 Dall. 171, 1 L. ed. 556; *Scholey v. Rew*, 23 Wall. 331, 22 L. ed. 99; *Springer v. United States*, 102 U. S. 586, 26 L. ed. 253.

⁹ *Pollock v. Farmers' Loan etc. Co.*, 158 U. S. 601, 15 S. Ct. 812, 39 L. ed. 1108.

* See, also, art. I, § 9, cl. 4.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies, How Created.

The death of a member receiving a majority of the votes at any time after they were cast creates a vacancy, whether they have been canvassed or not.¹ Where, however, a member died before the decision of a contest pending against him and his successor was elected and sworn in under protest, but it afterward appeared that the contestant had been elected at the first election, it was held that no vacancy had existed.² Resignation to the governor of the state creates a vacancy.³ The word "happen" as used in this clause is not confined to unforeseen or fortuitous events, and a vacancy may "happen" by the expiration of the term, and the calling of an extra session before the regular election.⁴

The acceptance of a disqualifying office creates a vacancy;⁵ but a member does not forfeit his right to his seat by accepting an incompatible office, if he resigns therefrom before the beginning of the session.⁶

Elections to Fill.

Upon receipt of a member's resignation the governor may issue writs of election without waiting for a certificate of the existence of the vacancy from the House.⁷ The governor may take notice of a vacancy created by the acceptance of a disqualifying office, and issue writs for a new election.⁸ But a member with the governor's certificate cannot take his seat before the organization of the House.⁹

¹ *Blakey v. Golladay*, 2 Bart. 417.

² *Mackey v. O'Connor*, 2 Ells. 565.

³ *Mercer's Case*, Cl. & H. 44; *Edward's Case*, Cl. & H. 92.

⁴ *Gholson and Claiborne's Case*, 1 Bart. 9.

⁵ *Van Ness Case*, Cl. & H. 122.

⁶ *Washburn v. Ripley*, Cl. & H. 682. See, also, art. I, § 6, cl. 2.

⁷ *Mercer's Case*, Cl. & H. 44; *Edward's Case*, Cl. & H. 92.

⁸ *Baker and Yell's Case*, 1 Bart. 92.

⁹ *New Jersey Case*, 1 Bart. 19.

Section 76 of the Revised Statutes, providing for the filling of vacancies, has no application to the case of the election of the first representative to which any new state may be entitled, and the first election, if for an unexpired term, is not in any sense the filling of a vacancy.¹⁰ Congress having provided that the time for holding elections to fill vacancies "may be prescribed by the laws of the several states," and the general assembly of Rhode Island having provided that the "general assembly shall order a new election," such election may be called by resolution of the Grand Committee; joint resolution is unnecessary.¹¹ If the legislature has failed to prescribe the time for an election to fill a vacancy, the governor may do so in his writs.¹²

Where the governor of Mississippi called a special election for representatives to serve at a "called session" until the regular election, and the House admitted them to serve the whole term, upon the rescission of its action the House declared the seats vacant, that regular election did not, because of the erroneous decision, express the will of the people.¹³

¹⁰ *Patterson v. Belford*, 1 Ells. 55.

¹¹ *In re Representative Election*, 17 R. I. 820, 21 Atl. 963.

¹² *Hoge's Case*, Cl. & H. 136.

¹³ *Gholson and Claiborne's Case*, 1 Bart. 9.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

The House of Representatives has the sole power to impeach government officers and the Senate to try them.¹

¹ Kilbourn v. Thompson, 103 U. S. 189, 190, 26 L. ed. 377.

SECTION 3.

SENATE.

1. Senators.
2. Divided into classes. Vacancies.
3. Qualifications.
4. President of Senate.
5. Other officers.
6. Impeachment.
7. Judgment on impeachment.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

State.

A senator must be elected from a state of the Union; his election before the admission of the state does not entitle him to a seat.¹ A political organization, to constitute a state, must be such in contemplation of the constitution,² and a state in the sense of the constitution is a political community of free citizens occupying definite territory and organized under a government, sanctioned and limited by a written constitution and established by the consent of the governed; the union of such states under the constitution forms the United States.³ A state in rebellion is not a state of the Union, whose legislature may rightfully elect senators.⁴ So, also, after a rebellion has been put down, and while the government is provisional, there is no body which can lawfully elect senators.⁵ But the acts declaring states

¹ Shield's Case, Taft, 187, Rep. of Com.

² Cherokee Nation v. Georgia, 5 Pet. 18, 8 L. ed. 25.

³ Texas v. White, 7 Wall. 721, 19 L. ed. 227.

⁴ Fishback v. Baxter, Taft, 240; and see Cutler's Case, Taft, 248.

⁵ Jones and Garland v. McDonald and Rice, Taft, 282. But see Bevel's Case, Taft, 312.

entitled to representation in Congress were held to relate back and validate all acts done after reconstruction and to entitle a senator elected during that time to his seat.⁶

Legislature.

The question as to which of two rival bodies, claiming to be the legislature of a state is the real legislature is for the Senate to decide in a contest for seats.⁷ It would seem, however, that a body duly organized, and whose members hold certificates of election, would be deemed to be the "legislature" for the purpose of electing a senator, and that a majority of that body would be sufficient.⁸

"Chosen" and "elected" are synonymous terms.⁹ A senator elected by a plurality of the votes of the legislature sitting in joint convention is not entitled to a seat; in the absence of any positive rule as to the proportion of votes necessary, a majority is essential;¹⁰ but the fact that a person elected by a majority of one was chairman of the joint meeting of the legislature, and cast the deciding vote, cannot disqualify him.¹¹

⁶ *Hart v. Gilbert*, Taft, 321; *Reynolds v. Hamilton*, Taft, 323.

⁷ *Louisiana Cases*, Taft, 426; and see *Sykes v. Spencer*, Taft, 556.

⁸ *Corbin v. Butler*, Taft, 582, Rep. of Com.

⁹ *Norwood v. Blodgett*, Taft, 331.

¹⁰ *Stockton's Case*, Taft, 264.

¹¹ *Bateman's Case*, Taft, 96.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Classification.

When senators first appear from new states, the classification is to be determined by lot in the mode adopted upon the first assembling of the Senate, so as to prevent two vacancies occurring in the same state at the same time.¹ Where by allotment a senator from a new state is placed in a class whose term expires at a time when the legislature of his state is not in session, at the expiration of his term a "vacancy" exists which the governor is empowered to fill by reappointment or otherwise.²

Vacancies.

"By resignation or otherwise" includes a vacancy created by the expiration of a senator's term,³ and a senator reappointed by the governor "until the next meeting of the legislature" is entitled to his seat during a special session of Congress.⁴ So where the term of a senator expires during a recess of the legislature elected under an old state constitution, and before the term of the legislature elected under the new constitution begins, a vacancy exists which it is within the power of the legis-

¹ Senate Journal, May 15, 1789.

² Sevier's Case, Taft, 7.

³ Bell's Case, Taft, 26.

⁴ Tracey's Case, Taft, 3; Smith's Case, Taft, 4. But see Lanman's Case, Cl. & H. 871, Taft, 5.

lature to fill.⁵ A senator appointed by the governor after a session has intervened during the vacancy is not, however, entitled to a seat.⁶ Where the incumbent has presented his resignation to take effect in the future, and his successor has been elected, the death of the former before the resignation takes effect creates a vacancy which the governor may fill until that time, but the appointee cannot hold thereafter as against the person elected by the legislature.⁷ The mere transmission of a resignation to the governor is sufficient to create a vacancy; the delay of the governor's acceptance, in the hope of a reconsideration, is immaterial.⁸ The executive of a state cannot appoint a senator to fill an expected vacancy during a recess of the legislature.⁹

⁵ Bell's Case, Taft, 26; Blair's Case, Taft, 36.

⁶ Johns' Case, Taft, 1. Contra, Phelps' Case, Taft, 16.

⁷ Dixon's Case, Taft, 13.

⁸ Bledsoe's Case, Cl. & H. 869, Taft, 95.

⁹ Lanman's Case, Cl. & H. 871, Taft, 5.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

A senator must be a male citizen,¹ and must have been nine years a citizen at the commencement of his term.² Residence is not sufficient; citizenship is what is required, and notwithstanding the period of residence exceeds nine years, if actual citizenship falls short of nine years, a person is ineligible.³ The fact that a senator-elect had some negro blood in him, and the objection was raised that he was barred of election for a period of nine years after the ratification of the fourteenth amendment, seems not to have been seriously considered by the Senate.⁴ One who was a resident of the United States at the close of the Revolutionary war, and an alien, was held not to be eligible until the lapse of nine years after taking the oath of allegiance.⁵

Where the constitution and laws of a state do not define residence or the qualifications necessary to render a person an inhabitant, the certificate of the governor that his appointee is an inhabitant is sufficient.⁶ One who served in the army of the United States in a state in insurrection, and was afterward made provisional governor, and declared his intention of remaining in the state two years before his election as senator, was an inhabitant within the meaning of the constitution.⁷

The constitution having prescribed the qualifications necessary, the states cannot add to them,⁸ and neither the Secretary of State, nor the supreme court of the state has any power to pass upon the legality of a senator's election or appointment.⁹

¹ Gallatin's Case, Cl. & H. 851.

² Gallatin's Case, Cl. & H. 851; Shields' Case, Taft, 138.

³ Shields' Case, Taft, 138.

⁴ Revel's Case, Taft, 312.

⁵ Gallatin's Case, Cl. & H. 851; Shields' Case, Taft, 138.

⁶ Griswold's Case, Taft, 94.

⁷ Ames' Case, Taft, 317.

⁸ Trumbull's Case, Taft, 148; State v. Russell, 8 Ohio N. P. 54, 10 Ohio S. & C. P. Dec. 255.

⁹ State v. Crawford, 28 Fla. 441, 10 South. 118, 14 L. E. A. 253.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

The House of Representatives has the sole power to impeach government officials, and the Senate to try them.¹ Upon the trial of the President, the chief justice is the president of the Senate sitting as a court of impeachment, and it is his duty to pass upon questions of evidence in the first instance, and then to submit them to the Senate if so desired by a member.²

For the form of oath, see Chase's Trial, p. 12; and for rules governing impeachment trials generally, see William Blount's Trial, December 17, 1798, to January 15, 1799; John Pickering, March 3, 1803—March 12, 1803; James H. Peck, App. Legis. Journal of Senate, 1830, 1831.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

¹ *Kilbourn v. Thompson*, 103 U. S. 189, 190, 26 L. ed. 377.

² *Trial of Andrew Johnson*, vol. 1, pp. 175, 176, 186.

SECTION 4.

CONGRESS.

1. Elections for Senators and Representatives.

2. Sessions of Congress.

1. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

While it is the duty of the state legislature to enact laws prescribing the time, place and manner of holding elections, if it has failed to do so, the governor may give notice of the time and place, and the person elected to Congress will be entitled to his seat;¹ but the governor cannot delegate to another the power to fix the time—e. g., to the person carrying the writs.² Where a state constitution fixes the time of election, it places it beyond the control of the legislature.³ But as to the place of election, it was declared that a constitutional provision prohibiting an elector from voting outside his own township or ward was overridden by an act of legislature permitting soldiers to vote outside their states, wherever their regiments might be.⁴

Congress, by refraining from altering state laws respecting congressional elections, in effect adopts them, but retains its power to provide additional means for their enforcement;⁵ the failure of Congress to exercise its power does not impair the force of the grant, but it may be exercised, and new regulations

¹ Hoge's Case, Cl. & H. 135.

² Graffin's Case, 1 Bart. 464.

³ Shiel v. Thayer, 1 Bart. 349. The chairman of the committee so reporting argued on the floor that the words "by the legislature thereof" meant by the people, through any constituted authority. But see Baldwin v. Trowbridge, 2 Bart. 46.

⁴ Baldwin v. Trowbridge, 2 Bart. 46.

⁵ Ex parte Siebold, 100 U. S. 389, 25 L. ed. 717.

made or existing ones altered after state legislation on the subject.⁶ Congress may exercise this power without assuming entire control of the subject of elections for senators and representatives.⁷ It may make provision for the fair and honest conduct of such elections, and to this end may adopt state election statutes and enforce them in the federal courts.⁸ Although this clause of the constitution adopts state qualifications of voters as qualifications for voters for members of Congress, the right of persons thus ascertained is based upon the constitution, and Congress may enact laws protecting that right.⁹ The power of Congress extends to the registration of voters at elections for members of Congress,¹⁰ and a fraudulent addition to the list of voters is punishable under federal law.¹¹

The object of the power is to insure, in elections for senators and representatives, the protection of electors in a free interchange of views, and a free choice and vote.¹² So Congress may make or adopt regulations and prescribe a penalty for their violation.¹³ It may require state officers to perform duties under state laws at a congressional election,¹⁴ and may punish fraud or any other illegal act on the part of state officers at such an election.¹⁵ Section 5511 of the Revised Statutes is applicable

⁶ *Ex parte Siebold*, 100 U. S. 389, 25 L. ed. 717; *Ex parte Clarke*, 100 U. S. 404, 25 L. ed. 715; *United States v. Gale*, 109 U. S. 65, 3 S. Ct. 1, 27 L. ed. 857; *In re Coy*, 127 U. S. 752, 8 S. Ct. 1263, 32 L. ed. 274; *Blitz v. United States*, 153 U. S. 314, 14 S. Ct. 924, 38 L. ed. 725; *United States v. Bader*, 4 Woods, 190, 16 Fed. 117; *United States v. O'Connor*, 31 Fed. 452; *United States v. Kelsey*, 42 Fed. 883.

⁷ *Ex parte Siebold*, 100 U. S. 383, 25 L. ed. 717.

⁸ *In re Coy*, 127 U. S. 752, 8 S. Ct. 1263, 32 L. ed. 274.

⁹ *Ex parte Yarbrough*, 110 U. S. 644, 4 S. Ct. 152, 28 L. ed. 274.

¹⁰ *Ex parte Geissler*, 9 Biss. 492, 4 Fed. 188.

¹¹ *Ex parte Bader*, 4 Woods, 190, 16 Fed. 117; *In re Holt*, 104 Fed. 336; *In re Spooner*, 104 Fed. 334.

¹² *United States v. Goldman*, 3 Woods, 187, Fed. Cas. No. 15,225.

¹³ *United States v. O'Connor*, 31 Fed. 452.

¹⁴ *In re Coy*, 127 U. S. 743, 8 S. Ct. 1263, 32 L. ed. 274, affirming 31 Fed. 804.

¹⁵ *Ex parte Siebold*, 100 U. S. 391, 25 L. ed. 717; *Ex parte Clarke*, 100 U. S. 404, 25 L. ed. 715; *United States v. Gale*, 109 U. S. 66, 3 S. Ct. 2, 27 L. ed. 857.

only to those acts or omissions at elections which affect or might affect the integrity of an election for a congressman;¹⁶ but the power is in nowise affected by the fact that a state election is held simultaneously,¹⁷ and the power of Congress to protect poll-books from falsification is undoubted, and that danger is not removed, because the purpose of the exposure is to falsify returns for state officers and not those for a congressman.¹⁸

The federal constitution having declared that the legislatures of the several states shall regulate elections for congressmen, if the constitution of a state authorizes the general assembly, and that alone, to pass a registration law, an ordinance purporting to regulate registration, passed by a city council, is inoperative.¹⁹ While Congress possesses the power to alter the regulations of the states in regard to elections of senators and representatives, its power does not extend to commanding state legislatures to make such regulations, and any attempted alteration by Congress which cannot be carried into effect except by auxiliary state legislation is void.²⁰

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

¹⁶ *Blitz v. United States*, 153 U. S. 314, 14 S. Ct. 924, 38 L. ed. 725.

¹⁷ *Ex parte Yarbrough*, 110 U. S. 662, 4 S. Ct. 157, 28 L. ed. 274.

¹⁸ *In re Coy*, 127 U. S. 754, 8 S. Ct. 1263, 32 L. ed. 274.

¹⁹ *Sessinghaus v. Frost*, 2 Ells. 387.

²⁰ *Members Elected by General Ticket*, 1 Bart. 52.

SECTION 5.

POWERS OF HOUSES OF CONGRESS.

1. Judges of qualifications of their own members. Quorum.
2. Rules of proceedings. Expulsions.
3. Journals.
4. Adjournments.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Qualifications.

Whether a person has been regularly elected a senator is a question exclusively for the Senate, and neither the state supreme court nor Secretary of State can pass upon it.¹ The returns from the state authorities, showing the election of a certain person as senator or representative, are only *prima facie* evidence of qualification.² A commission issued by the governor does not preclude any inquiry necessary to the judgment of "elections, returns and qualifications";³ nor can the refusal of the governor to issue a certificate of election prejudice the right of one entitled to a seat.⁴ The decision that a senator is entitled to a seat is final and conclusive upon the state legislature, and all persons claiming seats under its authority.⁵ A certificate issued by the governor of a territory in violation of the law is

¹ *State v. Crawford*, 28 Fla. 441, 10 South. 118, 14 L. R. A. 253.

² *Spaulding v. Mead*, Cl. & H. 157; *Chrisman v. Anderson*, 1 Bart. 328; *Reed v. Cosden*, Cl. & H. 353.

³ *Bateman's Case*, Taft, 96.

⁴ *Richards' Case*, Cl. & H. 95.

⁵ *Case of Fitch and Bright*, Taft, 164.

not even *prima facie* evidence of a delegate's right to a seat.⁶ The oath will be administered to a senator having a *prima facie* right to a seat;⁷ but one who was allowed to take his seat on a *prima facie* case, and afterward ousted by a contestant rightfully elected, cannot be deemed to have been a member of Congress.⁸

The certificate issued by the governor of a state may be followed by another under a changed condition of the facts.⁹ So a certificate may issue on an amended return of the votes cast,¹⁰ and a supplementary return is entitled to be received;¹¹ e. g., where the original return was made by the wrong officers.¹² So also the governor may revoke a certificate for fraud.¹³ And one holding a certificate from the governor of a territory, given in lieu of a former certificate superseded for fraud is entitled to his seat as a delegate.¹⁴ While it is for Congress alone to judge of the elections, returns, and qualification of its own members, where county canvassers have erroneously acted upon a recount of the votes cast, and have issued a certificate in accordance therewith, the candidate who is injured by such a proceeding will not be left to his remedy by contest in the House of Representatives, but is entitled to mandamus to compel a recanvass.¹⁵ A state law requiring votes to be returned within a certain time is directory only,¹⁶ and if not so returned are to be counted, if opportunity is had to count them.¹⁷

Congress has the right to exclude a member-elect for other than the constitutional disqualifications without permitting him to be sworn in; e. g., for polygamy, insanity, or disloyalty, or

⁶ Colorado Case, Hunt and Chilcott, 2 Bart. 164.

⁷ Lanman's Case, Taft, 579; Morgan's Case, Taft, 581.

⁸ Bowman v. Coffroth, 59 Pa. St. 19.

⁹ Wallace v. Simpson, 2 Bart. 731-746.

¹⁰ Sleeper v. Rice, 1 Bart. 472.

¹¹ Archer v. Allen, 1 Bart. 169-176.

¹² Brockenborough v. Cabell, 1 Bart. 79-87.

¹³ Morton v. Daily, 1 Bart. 402-414.

¹⁴ Morton v. Daily, 1 Bart. 402-414.

¹⁵ Belknap v. Board, 94 Mich. 916, 54 N. W. 376.

¹⁶ Brockenborough v. Cabell, 1 Bart. 79-87.

¹⁷ Richards' Case, Cl. & H. 95-100.

any other obvious disqualification.¹⁸ So the Senate may inquire as to the mental capacity of a senator-elect to take the oath.¹⁹ It seems that fraud and bribery in procuring an election go to the validity of the election, and do not merely furnish ground for expulsion.²⁰ Accusations against the character of a senator-elect imputing to him the commission of a crime will not be considered until after he has been formally charged and convicted of the crime.²¹ Disloyalty is a disqualification which will deprive a member-elect of the right to be sworn in;²² but where it is shown that a person seemingly disloyal during war was in fact loyal, he will be held eligible.²³ So the fact that a senator-elect had held the office of circuit judge by election in an insurrectionary state was declared insufficient to warrant his exclusion, where he was shown to have been loyal to the Union.²⁴

Members elected for an extra or special session must give way to regularly elected members for that Congress.²⁵ Where the House is unable to determine which of two claimants for a seat was legally elected, the seat will be declared vacant, and a new election ordered.²⁶ In no event, however, where a senator-elect is found to be disqualified, will the person receiving the next highest number of votes be entitled to the seat.²⁷ A territorial government must be in existence before a delegate can be admitted.²⁸

In a proceeding to determine the qualifications of its members-elect, each House may examine witnesses and require the production of papers, and may punish witnesses for contempt.²⁹

18 *Roberts' Case*, Rep. 85, 1st Sess., 56th Cong.

19 *Mills' Case*, Taft, 136.

20 *Pomeroy and Caldwell's Case*, Taft, 368.

21 *Marshall's Case*, Taft, 68.

22 *McKee v. Young*, 2 Bart. 422; *Christy v. Wimpy*, 2 Bart. 465; *Smith v. Brown*, 2 Bart. 395.

23 *Tucker v. Booker*, 2 Bart. 772.

24 *Patterson's Case*, Taft, 271.

25 *Gholson & Claiborne's Case*, 1 Bart. 9.

26 *Letcher v. Moore*, Cl. & H. 715.

27 *Ransom v. Abbott*, Taft, 338.

28 *Smith's Case*, 1 Bart. 107; *Babbitt's Case*, 1 Bart. 116. And see *Messervy's Case*, 1 Bart. 148.

29 *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. ed. 377.

Testimony taken before a state notary public in a case of contested election for a congressman, for the purpose of being returned to and considered by the House acting in a judicial capacity under this clause is upon the same footing as testimony produced before a federal judge or officer, and perjury in giving such testimony is punishable only in the federal courts.³⁰

Quorum.

The Houses of Congress may prescribe any reasonable rule for determining the presence of a majority; hence rule 15 of the House of Representatives, of the fifty-first Congress, providing that the names of members present, and not voting, may be entered on the journal, is a valid exercise of the power of the House to determine the rules of its proceedings.³¹

³⁰ *In re Loney*, 134 U. S. 375, 10 S. Ct. 585, 33 L. ed. 949. See, also, *United States v. Bailey*, 9 Pet. 257, 9 L. ed. 113.

³¹ *United States v. Ballin*, 144 U. S. 6, 12 S. Ct. 507, 36 L. ed. 321.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Rules of Proceedings.

This clause empowers each House to determine its rules of proceedings, but it may not, by such rules, ignore constitutional restraints or violate fundamental rights.¹ The rule for determining the presence of a majority is a proper exercise of this power.²

Contempt.

Under this clause the Houses have implied power to punish for contempt committed in their presence when in session.³ Imprisonment for contempt must terminate with the adjournment of Congress; as a legislative body, Congress ceases to exist upon adjournment or periodical dissolution, and its authority ceases with it.⁴ The English parliament was originally a high court of judicature, and, after its separation into two houses, each was deemed to retain its judicial functions; hence its power to punish for contempt; but the power of Congress cannot be deemed analogous, and in determining the question of the power of Congress to punish for contempt the question is whether it is necessary to enable Congress to exercise its functions.⁵ No person can be punished by either House of Congress for contumacy as a witness, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and neither House has jurisdiction to inquire, or possesses general power of making inquiry into private affairs

¹ *United States v. Ballin*, 144 U. S. 5, 12 S. Ct. 507, 36 L. ed. 321.

² *United States v. Ballin*, 144 U. S. 5, 12 S. Ct. 507, 36 L. ed. 321.

³ *Anderson v. Dunn*, 6 Wheat. 229, 5 L. ed. 242.

⁴ *Anderson v. Dunn*, 6 Wheat. 231, 5 L. ed. 242; *Stewart v. Blaine*, 1 McAr. 453; *Wickelhausen v. Willett*, 10 Abb. Pr. 164.

⁵ *Kilbourn v. Thompson*, 103 U. S. 189, 26 L. ed. 377.

of a citizen; and the courts may inquire as to the jurisdiction.⁶ The power of one of the Houses to punish for contempt is not confined to the punishment of members of that body, but may be exercised over others,⁷ in secret as well as in open session.⁸ But Congress cannot establish its right to fine and imprison persons by the mere act of asserting them to be guilty of contempt; it is always competent to show that Congress is proceeding in a matter beyond its legitimate cognizance.⁹ While, ordinarily, Congress has no power to investigate private affairs, or to compel a witness to testify on such a subject,¹⁰ yet where the question is as to whether a senator had dealt in certain stock, the Senate may compel a witness to answer questions going to show such dealings.¹¹ The warrant to commit for contempt may be served anywhere within the boundaries of the United States;¹² but a warrant of arrest issued by the Senate and addressed to the sergeant-at-arms cannot be served in a state by a deputy.¹³

Expulsion.

The right to expel a member is absolute, limited by the condition that it must be exercised by a two-thirds vote.¹⁴ Either House may expel a member for any misdemeanor which, though having no penalty attached to it, is incompatible with the trust and duty of a member;¹⁵ but the power to expel ought not to be exercised for a cause unrelated to that trust and duty.¹⁶

⁶ *Kilbourn v. Thompson*, 103 U. S. 190, 196, 26 L. ed. 377.

⁷ *Anderson v. Dunn*, 6 Wheat. 229, 5 L. ed. 242; *Bolton v. Martin*, 1 Dall. 296.

⁸ *Nugent's Case*, 18 Fed. Cas. 472.

⁹ *Kilbourn v. Thompson*, 103 U. S. 196-200, 26 L. ed. 377, partially overruling *Anderson v. Dunn*, 6 Wheat. 204, 5 L. ed. 242.

¹⁰ *Kilbourn v. Thompson*, 103 U. S. 190, 26 L. ed. 377.

¹¹ *In re Chapman*, 166 U. S. 668, 17 S. Ct. 680, 41 L. ed. 1154. And see *People v. Keeler*, 99 N. Y. 476, 52 Am. Rep. 54, 2 N. E. 620; *People v. Sharp*, 107 N. Y. 445, 1 Am. St. Rep. 857, 14 N. E. 332.

¹² *Anderson v. Dunn*, 6 Wheat. 204.

¹³ *Sanborn v. Carlton*, 15 Gray, 402.

¹⁴ *Roberts' Case* (Minority Rep.), Rep. 85, p. 46, 56th Cong., 1st Sess.

¹⁵ *Blount's Case*, Taft, 74; *Smith's Case*, 1 Hall's S. L. J. 459; *Bright's Case*, Taft, 217.

¹⁶ *Roberts' Case*, Rep. 85, 56th Cong., 1st Sess.

Conspiracy against the Union, or having knowledge of conspiracy, and failing to report it, is ground for expulsion.¹⁷ Countenancing rebellion is equivalent to giving aid and comfort to public enemies, and warrants expulsion.¹⁸ The Senate has jurisdiction to inquire as to the truth of charges in the public press as to alleged dealings of senators in the stock of corporations affected by a pending tariff bill, and it is not essential that the preamble and resolution instituting the inquiry shall declare that the proceeding is taken for the purpose of censure or expulsion.¹⁹

A resolution of expulsion will not be considered after the term of the accused senator has expired.²⁰ But a member who has saved himself from expulsion by resigning while the resolution was pending will be refused admission upon his re-election.²¹

¹⁷ *Expulsion of Senators*, Taft, 195; *Wigfall's Case*, Taft, 199.

¹⁸ *Polk's Case*, Taft, 213; *Bright's Case*, Taft, 217; *Johnson's Case*, Taft, 215.

¹⁹ *In re Chapman*, 166 U. S. 661, 17 S. Ct. 677, 41 L. ed. 1154.

²⁰ *Patterson's Case*, Taft, 423.

²¹ *Whittemore's Case*, 41st Cong.

3. Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

A journal is a public record of which the courts will take judicial notice,¹ and to which they may refer whenever a question arises as to the existence of a statute, or of the time when it took effect, or of its precise terms.² The legislative journal must be presumed to speak the truth if it may be referred to as evidence,³ and a statute found in the office of the Secretary of State, duly authenticated, and shown by the journal to have been passed by a quorum is unimpeachable.⁴ The journal cannot be kept secret unless the proceedings are secret; but the holding of a secret session by either House is in its discretion.⁵

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

¹ *Brown v. Nash*, 1 Wyo. 85.

² *Hollingsworth v. Thompson*, 45 La. Ann. 222, 40 Am. St. Rep. 220, 12 South. 1.

³ *United States v. Ballin*, 144 U. S. 4, 12 S. Ct. 507, 36 L. ed. 321.

⁴ *United States v. Ballin*, 144 U. S. 9, 12 S. Ct. 507, 36 L. ed. 321; *State v. Chester*, 39 S. C. 316, 17 S. E. 755.

⁵ *Nugent's Case*, 18 Fed. Cas. 472 (No. 13,375).

Notes on Constitution—5

SECTION 6.

COMPENSATION AND PRIVILEGES OF MEMBERS.

1. Compensation of members. Privileges of Senators and Representatives.
2. Ineligibility to United States offices.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Compensation.

Under section 51, Revised Statutes, relating to vacancies in Congress, the "predecessor" referred to must have been in the same Congress; but the term includes one having credentials and drawing his salary although afterward unseated on the ground that he was not legally elected. Accordingly, the person elected to fill the vacancy is entitled to compensation from the time the seat was declared vacant.¹

Privileges of Members.

The privilege of exemption from arrest may be pleaded in bar in all cases other than treason, felony, and breach of the peace; but the courts will not take judicial notice of the privilege and failure to plead it will be deemed a waiver.² Arrest implies corporal restraint.³ The privilege from arrest could not be sur-

¹ Page v. United States, 127 U. S. 69, 8 S. Ct. 1026, 32 L. ed. 65.

² Coxe v. McClenachan, 3 Dall. 478; Gyer's Lessees v. Irwin, 4 Dall. 107.

³ Wooley v. Butler, 1 Bank. L. T. 35.

rendered without endangering the public as well as the private independence of the member.⁴ It extends to judicial as well as mesne process, and a person arrested is entitled to his discharge on the privilege afterward acquired;⁵ but there is no privilege from the service or obligation of a subpoena in a criminal case,⁶ and in no case can a member be placed by his position above responsibility to the legal tribunals of the country and to ordinary process for arrest and detention, when accused of a felony.⁷ This clause does not preclude an indictment for bribery;^{7a} nor does it protect a member from arrest on probable cause that a breach of the peace is about to be committed.⁸ The privilege is to be taken strictly, and to be allowed only during attendance on Congress, or while actually on the journey to or from the seat of government;⁹ but it is not waived by a slight deviation from the route which is most direct.¹⁰ It is limited to a convenient and reasonable time in addition to the actual session;¹¹ but it is strictly personal and does not extend to servants or to property levied upon.¹² Members are privileged not only from arrest, but also from a service of summons or other civil process while in attendance on their public duties;¹³ but it seems that attendance on Congress does not entitle a party to the postponement of his suit as a matter of right, although the court may grant a postponement upon

⁴ *Bolton v. Martin*, 1 Dall. 296; *Coffin v. Coffin*, 4 Mass. 1, 3 Am. Dec. 189.

⁵ *Coxe v. McClenachan*, 3 Dall. 478; *Nones v. Edsall*, 1 Wall. Jr. 189, Fed. Cas. No. 10,290.

⁶ *United States v. Cooper*, 4 Dall. 341.

⁷ *United States v. Kirby*, 7 Wall. 486, 19 L. ed. 278; *State v. Waite*, 101 Iowa, 380, 70 N. W. 597; *Penny v. Walker*, 64 Me. 434, 18 Am. Rep. 272.

^{7a} *State v. Smalls*, 11 S. C. 262.

⁸ *United States v. Wise*, 1 Dist. Col. Rep. 82, Fed. Cas. No. 16,746a.

⁹ *Lewis v. Elmendorf*, 2 Johns. Cas. 222. And see *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579.

¹⁰ *Miner v. Markham*, 28 Fed. 387.

¹¹ *Hoppin v. Jenckes*, 8 B. I. 453, 5 Am. Rep. 597.

¹² *Jefferson's Manual*, § 3.

¹³ *Coxe v. McClenachan*, 3 Dall. 478.

terms.¹⁴ One who goes to Washington, duly commissioned, is privileged from arrest, and although it is afterward determined by Congress that he is not entitled to his seat, he is protected until he reaches his home, provided he returns within a reasonable time.¹⁵ The privilege extends to a delegate from a territory as well as a member from a state.¹⁶ The sergeant-at-arms may be held for false imprisonment of one unlawfully held by him under the order of the House; but members who took no actual part in the arrest or imprisonment are exempt under the constitution.¹⁷

The constitutional exemption of members of Congress is not limited to words spoken in debate, but extends to written committee reports, resolutions offered, and the act of voting orally or by passing between tellers.¹⁸ It applies to speech or debate in either House; ¹⁹ but does not cover its publication by a member.²⁰

¹⁴ *Nones v. Edsall*, 1 Wall. Jr. 189, Fed. Cas. No. 10,290.

¹⁵ *Dunton v. Halstead*, 4 Pa. L. J. 237.

¹⁶ *Doty v. Strong*, 1 Pinn. (Wis.) 88.

¹⁷ *Kilbourn v. Thompson*, 103 U. S. 200, 26 L. ed. 377.

¹⁸ *Kilbourn v. Thompson*, 103 U. S. 204, 26 L. ed. 377.

¹⁹ *Anderson v. Dunn*, 6 Wheat. 215, 5 L. ed. 242.

²⁰ *Coffin v. Coffin*, 4 Mass. 1, 3 Am. Dec. 189. See *Canfield v. Gresham*, 82 Tex. 17, 17 S. W. 392.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

The acceptance by the same person of an office incompatible with another held by him is a virtual resignation or forfeiture of the office first held.¹ The appointment to a disqualifying office is not void as to that office, but the first office is ipso facto vacated.² It would seem that the rule should operate to vacate an incompatible office upon a representative's taking his seat, without the necessity of a formal resignation, and such was the argument in a case where the point was not necessarily involved, the office having ceased to exist, and the member being allowed to take his seat.³ The acceptance of any office under the United States by a member after he has taken his seat, operates as a forfeiture of the seat,⁴ and the acceptance of an incompatible office by a contestant destroys any claim he might have had to the seat.⁵ It is immaterial whether the member or contestant performs the duties of the second office or not; it is the holding of the office which is incompatible with membership in Congress.⁶ The continuance in an office after election to Congress, and until taking his seat, does not disqualify a member-elect if he resigned before the beginning of the first session.⁷ A representative-elect may hold an incompatible office subsequent

¹ *Byington v. Vandever*, 1 Bart. 397.

² *People v. Carrique*, 2 Hill, 93; *Biencourt v. Parker*, 27 Tex. 558.

³ *Mumford's Case*, Cl. & H. 318.

⁴ *Van Ness' Case*, Cl. & H. 122.

⁵ *Bowen v. De Large, Smith*, 100.

⁶ *Hammond v. Herrick*, Cl. & H. 289.

⁷ *Hammond v. Herrick*, Cl. & H. 289; *Earle's Case*, Cl. & H. 314; *Stanton v. Lane*, Taft, 205; *Washburn v. Ripley*, Cl. & H. 682.

to his election, and subsequent to the 4th of March, when Congress ceases to exist, but at the beginning of the first session of Congress to which he is elected, he must choose between the two offices.⁸ A member of Congress who had held the office of assessor of taxes, and had not resigned such office, was permitted to retain his seat on the ground that the duties of the office had ceased, and the law under which the office was created had expired before he took the seat.⁹ The acceptance of a military commission vacates the seat of a member of Congress,¹⁰ and this notwithstanding the commission styles the holder as an officer in the militia of a state, the officers of the volunteer army being deemed officers of the United States.¹¹ The employment of a member of Congress to assist the attorney general in certain cases, for a specified compensation, does not make him an officer so as to affect his right to his seat.¹² One holding two compatible offices is not precluded from receiving the salaries of both.¹³

⁸ *Schenck v. Blair*, Rep. 110, 1st Sess., 38th Cong.

⁹ *Mumford's Case*, Cl. & H. 316.

¹⁰ *Baker & Yell's Case*, 1 Bart. 92; *Stanton v. Lane*, Taft, 205.

¹¹ *Byington v. Vandever*, 1 Bart. 396.

¹² *Massey v. Wise*, Mobley, 367. And see *Chalmers v. Manning*, Mobley, 35.

¹³ *Converse v. United States*, 21 How. 463, 16 L. ed. 192; *Brown's Case*, 9 Opin. Atty. Gen. 508.

SECTION 7.

ENACTMENT OF LAWS.

1. Revenue bills. Where to originate.
2. Manner of passage. How passed without President's approval.
3. Orders, resolutions, and votes. President's approval.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Revenue laws are those made for the direct and avowed purpose of creating revenue or public funds for government purposes,¹ and traceable to the power to levy taxes, duties, imposts and excises.² Accordingly, under this clause, the House has the sole power to originate bills for taxation.³ An act establishing a postal money-order system is not a revenue law,⁴ nor is a bill establishing rates of postage.⁵

¹ *United States v. Norton*, 91 U. S. 569, 23 L. ed. 448; *State v. Bernheim*, 19 Mont. 517, 49 Pac. 443; *Northern Counties Trust Co. v. Sears*, 30 Or. 402, 41 Pac. 935, 35 L. R. A. 188; *Johnson v. Hanscom*, 90 Tex. 329, 38 S. W. 764.

² *United States v. Hill*, 123 U. S. 681, 8 S. Ct. 308, 31 L. ed. 275; *United States v. Hopewell*, 51 Fed. 800.

³ *Stockton etc. R. R. Co. v. Stockton*, 41 Cal. 165.

⁴ *United States v. Norton*, 91 U. S. 568, 23 L. ed. 448.

⁵ *United States v. James*, 13 Blatchf. 207, Fed. Cas. No. 15,464.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

A statute, duly certified, is presumed to have been duly passed until the contrary is shown, a presumption arising in favor of the law, as printed by authority.¹ No notice of the passing of a law is necessary, unless made so by the law itself.² Neither the constitution nor any statute requires that the President date a bill upon signing it.³ A bill becomes a law either by the signing of it by the President, or by his retaining it for ten days without signing;⁴ but he must receive it ten entire days before adjournment, or it will not become a law.⁵ If he ap-

¹ In re Duncan, 139 U. S. 457, 11 S. Ct. 573, 35 L. ed. 219.

² The Mary and Susan, 1 Wheat. 57, 4 L. ed. 32.

³ Gardner v. The Collector, 6 Wall. 506, 18 L. ed. 890.

⁴ Gardner v. The Collector, 6 Wall. 506, 18 L. ed. 890.

⁵ Hyde v. White, 24 Tex. 145.

proves a bill he shall sign it, but he need not indorse on it the word "approved."⁶ A bill signed by the President while Congress is in recess for a definite time is not invalid.⁷ The manner of keeping journals and of authenticating a bill is left to the discretion of Congress, but while the constitution does not require that bills which have passed be attested by the presiding officers of the two Houses, usage requires that mode of authentication.⁸

A bill becomes a law only upon approval by the President and from the time of such approval;⁹ but Congress may prescribe the very moment, in the future, after approval, when it shall take effect as a law;¹⁰ and when no time is fixed, it takes effect from its date.¹¹ In computing the time when a statute is to take effect, fractions of a day are to be excluded,¹² except when substantial justice requires that they be included.¹³ Congress may leave the ascertainment of the contingency upon which an act shall take effect to any agency it may designate,¹⁴ or may direct that it take effect as of a date prior to its passage.¹⁵ In case of doubt, the time should be construed in favor of the

⁶ *Gardner v. The Collector*, 6 Wall. 506, 18 L. ed. 890.

⁷ *La Abra Min. Co. v. United States*, 175 U. S. 454, 20 S. Ct. 168, 44 L. ed. 223. And see *Hodge's Case*, 18 Ct. of Cl. 700.

⁸ *Field v. Clark*, 143 U. S. 671, 12 S. Ct. 495, 36 L. ed. 649.

⁹ *Gardner v. Collector*, 6 Wall. 506, 18 L. ed. 890; *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777.

¹⁰ *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777.

¹¹ *Matthews v. Zane*, 7 Wheat. 211, 5 L. ed. 425; *Lapeyre v. United States*, 17 Wall. 198, 21 L. ed. 606; *In re Ankrim*, 3 McLean, 285, Fed. Cas. No. 395; *Warren Mfg. Co. v. Aetna Ins. Co.*, 2 Paine, 501, Fed. Cas. No. 17,206; *United States v. Chong Sam*, 47 Fed. 883.

¹² *Arnold v. United States*, 9 Cr. 120, 3 L. ed. 671; *In re Ankrim*, 3 McLean, 285, Fed. Cas. No. 395; *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777; *United States v. Williams*, 1 Paine, 261, Fed. Cas. No. 16,723.

¹³ *In re Wynne*, 1 Chase, 227, Fed. Cas. No. 18,117; *In re Ankrim*, 3 McLean, 285, Fed. Cas. No. 395; *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777.

¹⁴ *Miller v. Mayor*, 109 U. S. 394, 3 S. Ct. 228, 27 L. ed. 971.

¹⁵ *United States v. Green*, 138 U. S. 296, 11 S. Ct. 299, 24 L. ed. 960.

citizen.¹⁶ The signing by the presiding officers of both Houses, in open session, of an enrolled bill, is an official attestation that it has passed Congress, and, when approved by the President and enrolled in the public archives, its authentication as a valid act of Congress is complete and unimpeachable.¹⁷

¹⁶ *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777.

¹⁷ *Field v. Clark*, 143 U. S. 672, 12 S. Ct. 495, 36 L. ed. 294.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

This clause does not require the President's approval of a proposed amendment to the constitution.¹ A joint resolution duly approved by the President, or duly passed with his approval, has the effect of a law.²

¹ *Hollingsworth v. Virginia*, 3 Dall. 381, 1 L. ed. 644. And see *State ex rel. v. Secretary of State*, 43 La. Ann. 655, 9 South. 798.

² *Resolutions of Congress*, 6 Opin. Atty. Gen. 680.

SECTION 8.

POWERS OF CONGRESS.

1. Taxes, duties, etc. Common defense and general welfare.
2. To borrow money.
3. To regulate commerce.
4. Naturalization. Bankruptcies.
5. Coining money. Weights and measures.
6. Punishment of counterfeiting.
7. Postoffices and post-roads.
8. Patents and copyrights.
9. Courts.
10. Piracy and other offenses.
11. To declare war, etc.
12. Raising army.
13. Navy.
14. Army and navy regulations.
15. Militia. Insurrections, etc.
16. Organizing, arming, and disciplining militia.
17. Exclusive legislative power over seat of Government, forts, etc.
18. To make laws necessary to carry powers into effect.

1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

Extent of Powers, Generally.

The United States is a government of enumerated powers; it can exercise only the powers granted to it by the constitution.¹ either expressly or by necessary implication.² But Congress has powers not specified, or even clearly traceable to one

¹ *McCulloch v. Maryland*, 4 Wheat. 406, 4 L. ed. 579; *United States v. Harris*, 106 U. S. 636, 1 S. Ct. 606, 27 L. ed. 290.

² *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97.

of the specified powers, but fairly deducible from the aggregate of power, or the sovereignty created;³ the constitution deals in general language, and instead of minutely specifying the powers of the general government, the people left it to Congress to adopt its own means of carrying out its powers.⁴

— Construction of Grant.

The words in a grant of power are to be taken in their natural and obvious sense,⁵ keeping always in view the objects for which the constitution was made,⁶ and when the general purpose of the grant is ascertained, the language is to be construed, as far as possible, as subservient to that purpose.⁷ The powers granted to Congress are to be exercised with discretion,⁸ but the existence of a power cannot be denied merely because it may be abused in its exercise; nor should it be presumed that abuses will take place;⁹ nor does the question of power depend upon the degree to which it may be exercised.¹⁰ The fact that compliance with the constitution will lead to the abandonment of a certain recognized mode of taxation cannot influence the determination of a question of power.¹¹

The powers conferred upon Congress must be regarded as relative to each other and all means to a common end;¹² so

³ *Legal Tender Cases*, 12 Wall. 534, 20 L. ed. 287; but see *United States v. Boyer*, 85 Fed. 429; *United States v. Gettysburg etc. Ry.*, 160 U. S. 683, 16 S. Ct. 427, 40 L. ed. 576.

⁴ *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97.

⁵ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

⁶ *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287; *Brown v. Maryland*, 12 Wheat. 437, 6 L. ed. 678; *McCall v. McDowell*, Deady, 254, Fed. Cas. No. 8673.

⁷ *Schollenberger v. Brinton*, 52 Pa. St. 9.

⁸ *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97.

⁹ *Powell v. Pennsylvania*, 127 U. S. 686, 8 S. Ct. 992, 32 L. ed. 253; *In re Rapier*, 143 U. S. 135, 12 S. Ct. 374, 36 L. ed. 93; *Kneedler v. Lane*, 45 Pa. St. 238; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

¹⁰ *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678; *State v. Goodwill*, 33 W. Va. 184, 25 Am. St. Rep. 687, 10 S. E. 287, 6 L. R. A. 621.

¹¹ *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 633, 15 S. Ct. 912, 37 L. ed. 1108.

¹² *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287.

when Congress has power to do an act by virtue of distinct powers, it may exercise which it pleases; and when it professes to act under one it need not resort to any other,¹³ or when Congress has power to accomplish a certain result, indirectly, by one mode, it may do so directly by another;¹⁴ but no power in itself substantive can be exercised or contravened by action under an incidental power,¹⁵ nor can an act which cannot be done directly, because of defect in power, be done indirectly.¹⁶

— Limitations.

The nature of society and of government establish certain limitations upon legislative power apart from constitutional provisions;¹⁷ there are limitations upon such power which grow out of the essential nature of all free governments,¹⁸ and an act of the legislature contrary to the great first principles of the social compact cannot be deemed a rightful exercise of legislative authority.¹⁹ Accordingly, while the constitution does not forbid Congress to pass laws impairing the obligation of contracts,²⁰ yet an act passed for the purpose of impairing contract obligations would be void.²¹ Constitutional provisions intended as securities for the rights of the people may operate

¹³ *N. R. Steamboat Co. v. Livingston*, 3 Cow. 713; *Thayer v. Hedges*, 23 Ind. 141.

¹⁴ *Interstate Commerce Com. v. Brimson*, 154 U. S. 486, 14 S. Ct. 1125, 38 L. ed. 1047.

¹⁵ *Thayer v. Hedges*, 23 Ind. 141.

¹⁶ *Wayman v. Southard*, 10 Wheat. 50, 6 L. ed. 253; *Hartford Fire Ins. Co. v. Doyle*, 6 Biss. 465, Fed. Cas. No. 6160.

¹⁷ *Fletcher v. Peck*, 6 Cr. 135, 3 L. ed. 162; *Satterlee v. Matthewson*, 2 Pet. 413, 7 L. ed. 458; *Kelly v. Pittsburg*, 85 Pa. St. 182, 27 Am. Rep. 639.

¹⁸ *Citizens' S. & L. Assn. v. Topeka*, 20 Wall. 663, 22 L. ed. 455.

¹⁹ *Calder v. Bull*, 3 Dall. 388, 1 L. ed. 648; *Poindexter v. Greenhow*, 114 U. S. 297, 5 S. Ct. 918, 29 L. ed. 185; *Wikder v. Chicago etc. R. R.*, 70 Mich. 385, 38 N. W. 290; *Janesville v. Carpenter*, 77 Wis. 303, 20 Am. St. Rep. 134, 46 N. W. 132, 8 L. R. A. 808.

²⁰ *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed. 458; *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287.

²¹ *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287; *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559.

as limitations on legislative power.²² A limitation of a power argues the existence of that power, and an exception from a power marks its extent.²³

— Delegation of Powers.

Powers belonging strictly to one of the co-ordinate branches of government cannot be delegated to another branch, but Congress may delegate powers not strictly legislative which it may rightfully exercise itself.²⁴ Accordingly Congress may confer upon the Secretary of the Treasury power to make customs and revenue regulations and to determine cases under them;²⁵ may grant to the Secretary of War power to supervise government work,²⁶ and may authorize the supreme court to prescribe rules of evidence.²⁷ But Congress cannot delegate power to the President to make a law with discretion as to what it shall be, although it may confer upon him discretion as to the execution of a law.²⁸ An act making it a crime to violate any rule thereafter to be made by the Secretary of the Interior for the protection of forest reserves is void as an attempted delegation of legislative power to an administrative office.²⁹

Although Congress cannot authorize a state to legislate, it may adopt state legislation;³⁰ it may divest designated articles of their interstate commerce character and subject them to the operation of state laws,³¹ and may authorize state officers to perform duties merely incidental to judicial power.³²

²² *Atchison etc. R. R. v. Denver etc. R. R.*, 110 U. S. 679, 4 S. Ct. 185, 28 L. ed. 291.

²³ *Gibbons v. Ogden*, 9 Wheat. 191, 6 L. ed. 23; *State v. Cunningham*, 83 Wis. 155, 35 Am. St. Rep. 59, 53 N. W. 53, 17 L. R. A. 145.

²⁴ *Wayman v. Southard*, 10 Wheat. 43, 6 L. ed. 253.

²⁵ *In re Kollock*, 165 U. S. 537, 17 S. Ct. 444, 41 L. ed. 813.

²⁶ *United States v. Ormsbee*, 74 Fed. 209.

²⁷ *White v. Toledo etc. R. R.*, 79 Fed. 135.

²⁸ *Field v. Clark*, 143 U. S. 693, 12 S. Ct. 495, 36 L. ed. 294.

²⁹ *United States v. Blasingame*, 116 Fed. 654.

³⁰ *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23.

³¹ *In re Rohrer*, 140 U. S. 556, 11 S. Ct. 865, 35 L. ed. 572; *Endleman v. United States*, 86 Fed. 460; *Stevens v. Ohio*, 93 Fed. 795.

³² *Robertson v. Baldwin*, 165 U. S. 279, 17 S. Ct. 326, 41 L. ed. 715.

Taxation—Definitions.

A tax is a rate or sum of money assessed on the person or property of a citizen by the government for the use of the nation or state;³³ a charge for the support of government,³⁴ to raise money for public purposes.³⁵ The obligation to pay taxes rests, not upon the privileges enjoyed or the protection given to a citizen, but upon the necessity of money for the support of government,³⁶ but the citizen receives compensation therefor in privileges and protection.³⁷ A tax is not a toll; a tax is a demand of sovereignty, while a toll is a demand of proprietorship.³⁸

— Nature and Extent of Power.

The power to tax rests upon necessity and is an incident and attribute of sovereignty.³⁹ It is an essential function of government necessary to the existence of the nation.⁴⁰ Being an incident of sovereignty, the taxing power is coextensive with sovereignty,⁴¹ and the power of the United States within its sphere is coextensive with its territory.⁴²

³³ *Loan Assn. v. Topeka*, 20 Wall. 664, 22 L. ed. 455; *Illinois Cent. Ry. v. Decatur*, 147 U. S. 198, 13 S. Ct. 293, 37 L. ed. 132.

³⁴ *United States v. Railroad Co.*, 17 Wall. 326, 21 L. ed. 597; *City of Camden v. Allen*, 26 N. J. L. 398; *Glasgow v. Rowse*, 43 Mo. 489.

³⁵ *Loan Assn. v. Topeka*, 20 Wall. 664, 22 L. ed. 455; *Cole v. La Grange*, 113 U. S. 9, 5 S. Ct. 416, 28 L. ed. 896; *State v. Osawakee Township*, 14 Kan. 420, 19 Am. Rep. 100; *In re Mayor of New York*, 11 Johns. 80.

³⁶ *Dobbins v. Commissioners*, 16 Pet. 445, 10 L. ed. 1022; *Van Brocklin v. Tennessee*, 117 U. S. 159, 6 S. Ct. 670, 29 L. ed. 845.

³⁷ *County of Mobile v. Kimball*, 102 U. S. 703, 26 L. ed. 238.

³⁸ *Case of State Freight Tax*, 15 Wall. 278, 21 L. ed. 146; *St. Louis v. Western Union Tel. Co.*, 148 U. S. 97, 13 S. Ct. 487, 37 L. ed. 380.

³⁹ *Dobbins v. Commissioners*, 16 Pet. 435, 10 L. ed. 1022; *Bailey v. Magwire*, 22 Wall. 215, 22 L. ed. 850.

⁴⁰ *Lane County v. Oregon*, 7 Wall. 76, 19 L. ed. 101.

⁴¹ *Brown v. Maryland*, 12 Wheat. 448, 6 L. ed. 678.

⁴² *Loughborough v. Blake*, 5 Wheat. 319, 5 L. ed. 98; *Gibbons v. Ogden*, 9 Wheat. 199, 6 L. ed. 23; *Providence Bank v. Billings*, 4 Pet. 563, 7 L. ed. 939.

The power may be exercised on the subjects to which it is applicable to the utmost extent to which the government may choose to carry it.⁴³ If the right exists it is unlimited,⁴⁴ and while it should not be arbitrarily exercised,⁴⁵ the fact that the power is liable to abuse is no proof of its nonexistence.⁴⁶ The power to tax is the power to destroy, and the only security against unwise legislation is the wisdom and justice of the legislative body.⁴⁷

— Boundaries of State and Federal Powers.

The power of taxation conferred by this clause does not operate as a prohibition upon the states;⁴⁸ it is original with the states, has never been surrendered by them,⁴⁹ and exists independent of the federal government.⁵⁰ While the power is common to both state and federal governments,⁵¹ and the grant

⁴³ *McCulloch v. Maryland* 4 Wheat. 428, 4 L. ed. 579; *Spencer v. Merchant*, 125 U. S. 355, 8 S. Ct. 926, 31 L. ed. 763; *Stockton etc. R. R. v. Stockton*, 41 Cal. 166; *People v. Fitch*, 148 N. Y. 78, 42 N. E. 520.

⁴⁴ *Weston v. Charleston*, 2 Pet. 466, 7 L. ed. 481; *Austin v. Aldermen*, 7 Wall. 699, 19 L. ed. 224; *Davis v. Richardson*, 45 Miss. 503, 7 Am. Rep. 733.

⁴⁵ *Parsons v. District of Columbia*, 170 U. S. 51, 18 S. Ct. 521, 42 L. ed. 943.

⁴⁶ *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 377, 2 S. Ct. 257, 24 L. ed. 419; *Postal etc. Cable Co. v. Charleston*, 153 U. S. 695, 14 S. Ct. 1096, 38 L. ed. 871.

⁴⁷ *Providence Bank v. Billings*, 4 Pet. 563, 7 L. ed. 939; *Kirtland v. Hotchkiss*, 100 U. S. 498, 25 L. ed. 558; *Spencer v. Merchant*, 125 U. S. 355, 8 S. Ct. 926, 31 L. ed. 763.

⁴⁸ *Passenger Cases*, 7 How. 571, 12 L. ed. 702; *Pervear v. Commonwealth*, 5 Wall. 475, 18 L. ed. 608; *Van Allen v. Assessors*, 3 Wall. 585, 18 L. ed. 229.

⁴⁹ *Thomson v. Pacific R. R.*, 9 Wall. 591, 29 L. ed. 105; *Henderson Br. Co. v. Henderson City*, 173 U. S. 623, 19 S. Ct. 565, 43 L. ed. 623; *First Nat. Bank v. Peterborough*, 56 N. H. 42, 22 Am. Rep. 421.

⁵⁰ *State Tonnage Tax Cases*, 12 Wall. 212, 20 L. ed. 370; *Transportation Co. v. Wheeling*, 99 U. S. 277, 25 L. ed. 412, affirming 9 W. Va. 178, 27 Am. Rep. 554.

⁵¹ *License Cases*, 5 How. 588, 12 L. ed. 256; *Bettman v. Warwick*, 108 Fed. 46.

to Congress does not supersede the power of the state,⁵² yet this clause vests power in Congress independent of any state control,⁵³ and in case of conflict between state and federal laws the latter must prevail.⁵⁴ On the other hand, the power of the states is inherent and not derived from the constitution,⁵⁵ and it cannot be interfered with by congressional action.⁵⁶ Except as restricted by the constitution states have power of taxation over all subjects,⁵⁷ and as to subjects over which the states have general power of legislation, their power to tax is supreme,^{57a} The taxing power of a state is limited to its territorial juris-

⁵² *State Tonnage Tax Cases*, 12 Wall. 214, 20 L. ed. 370.

⁵³ *Ableman v. Booth*, 21 How. 516, 16 L. ed. 169; *Ward v. Maryland*, 12 Wall. 427, 20 L. ed. 449.

⁵⁴ *Railroad Co. v. Peniston*, 18 Wall. 29, 21 L. ed. 787.

⁵⁵ *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Lane County v. Oregon*, 7 Wall. 77, 19 L. ed. 101; *Railroad Co. v. Peniston*, 18 Wall. 29, 21 L. ed. 787; *Nathan v. Louisiana*, 8 How. 73; *People v. Coleman*, 4 Cal. 46, 60 Am. Dec. 581; *State v. Harrington*, 68 Vt. 628, 35 Atl. 517, 34 L. R. A. 100.

⁵⁶ *Railroad Co. v. Peniston*, 18 Wall. 30, 21 L. ed. 787.

⁵⁷ *Lane County v. Oregon*, 7 Wall. 71, 19 L. ed. 101; *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449; *Loan Assn. v. Topeka*, 20 Wall. 669, 22 L. ed. 455; *Pullan v. Kinsinger*, 2 Abb. U. S. 110, Fed. Cas. No. 11,463; *Van Brocklin v. Tennessee*, 117 U. S. 176, 6 S. Ct. 684, 29 L. ed. 845; *New Orleans v. Clark*, 95 U. S. 654, 24 L. ed. 521; *Central Pac. R. R. v. California*, 162 U. S. 121, 16 S. Ct. 777, 40 L. ed. 903; *Rubotham v. McClure*, 4 Blackf. 505; *Hawkins v. Lawrence*, 8 Blackf. 226; *Clark v. Saybrook*, 21 Conn. 313; *Russell v. New York*, 2 Denio, 461; *People v. Commissioners*, 5 Denio, 401; *Raleigh etc. Co. v. Davis*, 2 Dev. & B. 451; *Swan v. Williams*, 2 Mich. 442; *Baker v. Johnson*, 2 Hill, 342; *State v. Philadelphia etc. R. R.*, 45 Md. 378, 24 Am. Rep. 513; *Carlisle v. Pullman Co.*, 8 Colo. 327, 7 Pac. 168; *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 533; *Bloodgood v. Mohawk Co.*, 18 Wend. 9, 31 Am. Dec. 313.

^{57a} *McCulloch v. Maryland*, 4 Wheat. 429, 4 L. ed. 579; *Gibbons v. Ogden*, 9 Wheat. 199, 6 L. ed. 23; *Hamilton County v. Massachusetts*, 6 Wall. 639, 18 L. ed. 904; *Nevada Bank v. Sedgwick*, 104 U. S. 111, 26 L. ed. 703; *Hagar v. Reclamation Dist.*, 111 U. S. 709, 4 S. Ct. 663, 28 L. ed. 569; *Bettman v. Warwick*, 108 Fed. 46; *St. Albans v. Car Co.*, 57 Vt. 85; *People v. Mayor*, 4 N. Y. 425; *People v. Hawley*, 3 Mich. 330; *Armington v. Barnet*, 15 Vt. 749, 11 Am. Dec. 705.

diction,⁵⁸ but it will not be presumed that a statute contemplates taxation of subjects beyond the territory of the state.⁵⁹

— Taxation of Governmental Agencies.

Implied constitutional restrictions upon the taxing power are as effectual as those expressed.⁶⁰ Such an implied restriction prevents the taxation of an instrumentality of the federal government by the states and of a state agency by the federal government;⁶¹ no such power on the part of the United States can be drawn from the words "welfare of the United States."⁶² Accordingly, Congress cannot tax the revenues of a municipal corporation,⁶³ nor impose a tax upon the salaries of state officials⁶⁴ or judges,⁶⁵ or upon official bonds of state officers.⁶⁶ An act of Congress requiring a revenue stamp to be affixed to process in state courts is void,⁶⁷ and while Congress may provide for the stamping of certain instruments, a contract not stamped as required cannot be excluded as evidence on that ground.⁶⁸

The states cannot tax the means and instruments employed

⁵⁸ *The Delaware R. R. Tax*, 18 Wall. 229, 21 L. ed. 888; *New York etc. R. R. v. Pennsylvania*, 153 U. S. 646, 14 S. Ct. 958, 38 L. ed. 846; *State Tax on Foreign Held Bonds*, 15 Wall. 319, 21 L. ed. 179.

⁵⁹ *Pittsburgh etc. Ry. v. Backus*, 154 U. S. 428, 14 S. Ct. 1114, 38 L. ed. 1031; *Western Union Tel. Co. v. Taggart*, 163 U. S. 20, 16 S. Ct. 1060, 41 L. ed. 49, affirming 141 Ind. 90, 40 N. E. 1053.

⁶⁰ *Ward v. Maryland*, 12 Wall. 427, 20 L. ed. 449.

⁶¹ *Collector v. Day*, 11 Wall. 124, 30 L. ed. 122; *Van Brocklin v. Tennessee*, 117 U. S. 177, 8 S. Ct. 684, 29 L. ed. 845; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 584, 15 S. Ct. 690, 39 L. ed. 759.

⁶² *United States v. Railroad Co.*, 17 Wall. 322, 21 L. ed. 597.

⁶³ *United States v. Railroad Co.*, 17 Wall. 322, 21 L. ed. 597; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 584, 15 S. Ct. 690, 39 L. ed. 759.

⁶⁴ *Ward v. Maryland*, 12 Wall. 427, 20 L. ed. 449.

⁶⁵ *Collector v. Day*, 11 Wall. 122, 30 L. ed. 122; *Day v. Buffinton*, 3 Cliff. 388, Fed. Cas. No. 3675; *Friedman v. Sigel*, 10 Blatchf. 328, Fed. Cas. No. 5080.

⁶⁶ *State v. Gorton*, 32 Ind. 5, 2 Am. Rep. 318.

⁶⁷ *Fifield v. Close*, 15 Mich. 508; *Jones v. Keep*, 19 Wis. 376; *Tucker v. Potter*, 35 Conn. 46.

⁶⁸ *Davis v. Richardson*, 45 Miss. 503, 7 Am. Rep. 734.

by the general government in the exercise of its functions,⁶⁹ or the instruments, emoluments or persons, and the necessary and proper means to execute its sovereign power.⁷⁰ So the property of the United States is exempt from state taxation,⁷¹ and the exemption extends to federal buildings erected upon private land⁷² and to unsurveyed lands,⁷³ and lands upon which United States holds a lien for survey fees.⁷⁴ While these are exempt, a state may tax the property of government agents.⁷⁵ The salary of a United States officer is not taxable by a state,⁷⁶ but a state court has declared that a postoffice clerk is not an officer, and his salary was subject to a state income tax.⁷⁷ A person licensed under federal revenue laws is not an "officer" exempt from taxation.⁷⁸

National banks are agencies of the federal government, and shares and capital stock in such banks are not taxable by the

⁶⁹ *McCulloch v. Maryland*, 4 Wheat. 316; *Van Allen v. Assessors*, 3 Wall. 591, 18 L. ed. 229; *Austin v. Aldermen*, 7 Wall. 694, 19 L. ed. 224; *Banks v. Mayor*, 7 Wall. 16, 19 L. ed. 57; *Hamilton Co. v. Massachusetts*, 6 Wall. 639, 18 L. ed. 904; *People v. Commissioners*, 4 Wall. 244, 18 L. ed. 344; *Osborn v. Bank*, 9 Wheat. 736, 6 L. ed. 204; *Farmers' etc. Nat. Bank v. Dearing*, 91 U. S. 34, 23 L. ed. 196; *National etc. Bank v. Mayor*, 62 Ala. 292, 34 Am. Rep. 18.

⁷⁰ *Dobbins v. Commissioners*, 16 Pet. 435, 10 L. ed. 1022; *Low v. Austin*, 13 Wall. 35, 20 L. ed. 517.

⁷¹ *Van Brocklin v. Tennessee*, 117 U. S. 178, 8 S. Ct. 684, 29 L. ed. 845; *Wisconsin R. R. v. Price County*, 133 U. S. 504, 10 S. Ct. 344, 33 L. ed. 687; *Bannon v. Burnes*, 39 Fed. 898; *Commonwealth v. Morrison*, 2 A. K. Marsh. 75; *City v. Churchill*, 36 N. Y. 693; *Fagan v. Illinois*, 84 Ill. 233.

⁷² *Andrews v. Auditor*, 28 Gratt. 127.

⁷³ *State v. Central Pac. R. R.*, 21 Nev. 269, 30 Pac. 692.

⁷⁴ *Tyler v. Cass County*, 1 N. Dak. 382, 48 N. W. 233.

⁷⁵ *Railroad Co. v. Peniston*, 18 Wall. 5, 21 L. ed. 787; *Central Pac. R. R. v. California*, 162 U. S. 125, 16 S. Ct. 779, 40 L. ed. 903.

⁷⁶ *Dobbins v. Commissioners*, 16 Pet. 450, 10 L. ed. 1022.

⁷⁷ *Melcher v. Boston*, 9 Met. 75.

⁷⁸ *State v. Bell*, Phill. (N. C.) 90; and see *License Cases*, 5 How. 504, 12 L. ed. 256.

states,⁷⁹ except as allowed by act of Congress.⁸⁰ So, also, United States securities are instruments of the federal government and the states cannot tax them in any way;⁸¹ but the fact that the capital stock of a corporation is invested in United States bonds does not exempt it from taxation.⁸² Internal revenue stamps are not subject to state taxation.⁸³

The exemption of these governmental agencies depends, however, solely upon the effect of the tax—whether it deprives them of the power to serve the government as intended;⁸⁴ if a tax only remotely affects the efficient exercise of those powers it is not void.⁸⁵ A tax upon the property of a railroad employed by the federal government does not impair the exercise of its powers;⁸⁶ nor does a tax upon the property of a telegraph company transmitting government messages;⁸⁷ but a state cannot

⁷⁹ *McCulloch v. Maryland*, 4 Wheat. 439, 4 L. ed. 579; *Osborn v. United States Bank*, 9 Wheat. 859, 6 L. ed. 204; *Owensboro Bank v. Owensboro*, 173 U. S. 667, 19 S. Ct. 537, 43 L. ed. 850; *Second Nat. Bank v. Caldwell*, 13 Fed. 433; *Carthage v. Bank*, 71 Mo. 509, 36 Am. Rep. 495; *Pittsburg v. Bank*, 55 Pa. St. 48.

⁸⁰ *Talbot v. Silver Bow County*, 139 U. S. 440, 11 S. Ct. 595, 35 L. ed. 210; *Pollard v. State*, 65 Ala. 630; *Bank of Albia v. Albia*, 86 Iowa, 37, 52 N. W. 336.

⁸¹ *Weston v. Charleston*, 2 Pet. 467, 469, 7 L. ed. 481; *Bank of Commerce v. New York*, 2 Black, 632, 17 L. ed. 451; *Van Allen v. Assessors*, 3 Wall. 590, 18 L. ed. 229; *Grether v. Wright*, 75 Fed. 753.

⁸² *Home Ins. Co. v. New York*, 134 U. S. 598, 10 S. Ct. 594, 33 L. ed. 1025.

⁸³ *Palfrey v. Boston*, 101 Mass. 329.

⁸⁴ *Railroad Co. v. Peniston*, 18 Wall. 36, 21 L. ed. 787; *Thomson v. Pacific R. R.*, 9 Wall. 591, 19 L. ed. 792; *National Bank v. Commonwealth*, 9 Wall. 359, 19 L. ed. 701.

⁸⁵ *Railroad Co. v. Peniston*, 18 Wall. 30, 21 L. ed. 787; *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 549, 8 S. Ct. 964, 31 L. ed. 790; *Broadhead v. Milwaukee*, 19 Wis. 624, 88 Am. Dec. 711.

⁸⁶ *Railroad Co. v. Peniston*, 18 Wall. 36, 21 L. ed. 787; *Central Pac. R. R. v. California*, 162 U. S. 119, 16 S. Ct. 776, 40 L. ed. 903.

⁸⁷ *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 549, 8 S. Ct. 964, 31 L. ed. 790.

tax a franchise granted to a railroad by Congress.⁸⁸ United States mail carriages are exempt from state taxation.⁸⁹

The granting of patents is an exclusive power of the federal government, and any interference with it by state taxation is void;⁹⁰ but a tax upon the tangible property embodying a patent does not impair rights under the patent,⁹¹ nor does a tax upon capital invested in the manufacture of patented articles.⁹²

— **Taxes, Duties, Imposts and Excises.**

The constitution uses "duties, impost and excises" in a natural sense, and in antithesis to "direct taxes."⁹³ "Duties" and "imposts" are synonymous terms, and are both definable as a tax levied upon articles imported from foreign countries,⁹⁴ while an excise is an inland tax generally imposed upon manufacturers,⁹⁵ but sometimes upon consumption and upon retail sale.⁹⁶ "Excise" is not to be confused with "license."⁹⁷

⁸⁸ *California v. Central Pac. R. R.*, 127 U. S. 41, 8 S. Ct. 1081, 32 L. ed. 150; *United States v. Stanford*, 161 U. S. 433, 16 S. Ct. 584, 40 L. ed. 751; *State v. Stephens*, 146 Mo. 682, 69 Am. St. Rep. 937, 48 S. W. 934.

⁸⁹ *Searight v. Stokes*, 3 How. 178.

⁹⁰ *In re Sheffield*, 64 Fed. 835; *Hollida v. Hunt*, 70 Ill. 112, 22 Am. Rep. 65; *Commonwealth v. Petty*, 96 Ky. 458, 29 S. W. 293; *People ex rel. v. Assessors*, 156 N. Y. 420, 51 N. E. 270.

⁹¹ *Webber v. Virginia*, 103 U. S. 347, 26 L. ed. 565.

⁹² *Crown Cork etc. Co. v. State*, 87 Md. 699, 67 Am. St. Rep. 376, 40 Atl. 1076; *Commonwealth v. Edison etc. Co.*, 145 Pa. St. 140, 27 Am. St. Rep. 684, 22 Atl. 846; but see *People v. Assessors*, 156 N. Y. 420, 51 N. E. 270.

⁹³ *Pollock v. Farmers' etc. Co.*, 158 U. S. 619, 622, 15 Sup. Ct. Rep. 912, 39 L. ed. 1108; *Nicol v. Ames*, 173 U. S. 518, 19 S. Ct. 586, 43 L. ed. 786; affirming 89 Fed. 149.

⁹⁴ *Hylton v. United States*, 3 Dall. 171, 1 L. ed. 556; *United States v. Tappan*, 11 Wheat. 419, 6 L. ed. 509; *Woodruff v. Parham*, 8 Wall. 123, 19 L. ed. 382; *Hinson v. Lott*, 8 Wall. 148, 19 L. ed. 387; *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. ed. 969.

⁹⁵ *License Cases*, 5 Wall. 462, 18 L. ed. 497; *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. ed. 969.

⁹⁶ *Pacific Ins. Co. v. Soule*, 7 Wall. 445, 19 L. ed. 95.

⁹⁷ *License Cases*, 5 Wall. 462, 18 L. ed. 497; *Pervear v. Commonwealth*, 5 Wall. 475, 18 L. ed. 608.

In the exercise of this power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare," Congress may authorize the building of custom-houses, employment of revenue cutters, appointment of collectors and other officers, establish needful bureaus, prescribe the time and manner of payment and define crimes and their punishment;⁹⁸ and may raise money in any manner not repugnant to the constitution.⁹⁹ The words "to pay the debts and provide for the general welfare" do not, however, confer any distinct and substantive power on Congress.¹⁰⁰

Subjects of the power granted to Congress to levy and collect excises are: manufactures;¹⁰¹ employments and occupations;¹⁰² sales;¹⁰³ banks,¹⁰⁴ including national banks;¹⁰⁵ circulating notes issued by states or banks;¹⁰⁶ railroads and their profits;¹⁰⁷ express companies.¹⁰⁸ A succession tax is an excise duty upon devolution, and may be imposed by Congress.¹⁰⁹

⁹⁸ *United States v. Rhodes*, 1 Abb. U. S. 40, Fed. Cas. No. 16,151.

⁹⁹ *United States v. Angell*, 11 Fed. 34.

¹⁰⁰ *United States v. Boyer*, 85 Fed. 425.

¹⁰¹ *License Cases*, 5 Wall. 474, 475, 18 L. ed. 497; *United States v. Singer*, 15 Wall. 111, 21 L. ed. 49; *United States v. Three Tons of Coal*, 6 Biss. 400, Fed. Cas. No. 16,515.

¹⁰² *License Cases*, 5 Wall. 470, 18 L. ed. 497; *Pacific Ins. Co. v. Soule*, 7 Wall. 446, 19 L. ed. 95; *United States v. Glab*, 99 U. S. 225, 25 L. ed. 273; *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. ed. 960.

¹⁰³ *Pacific Ins. Co. v. Soule*, 7 Wall. 445, 19 L. ed. 95; *United States v. Cutting*, 8 Wall. 443, 18 L. ed. 241; *Warren v. Shook*, 91 U. S. 712, 23 L. ed. 421; *Northrup v. Shook*, 10 Blatchf. 254, Fed. Cas. No. 10,329; *United States v. Angell*, 11 Fed. 34.

¹⁰⁴ *Bank for Savings v. Collector*, 3 Wall. 495, 18 L. ed. 207; *German Sav. Bank v. Archbold*, 15 Blatchf. 402, Fed. Cas. No. 4364; *Oulton v. Savings Inst.*, 17 Wall. 118, 21 L. ed. 618.

¹⁰⁵ *Central etc. Bank v. United States*, 137 U. S. 355, 11 S. Ct. 126, 34 L. ed. 703; *Sumter Co. v. Gainsville Nat. Bank*, 62 Ala. 464; *Pollard v. State*, 65 Ala. 628.

¹⁰⁶ *Barnes v. Railroads*, 17 Wall. 301, 21 L. ed. 544; *Springer v. United States*, 102 U. S. 586, 26 L. ed. 253.

¹⁰⁷ *Improvement Co. v. Slack*, 100 U. S. 648, 25 L. ed. 609; *Little Miami etc. R. R. v. United States*, 108 U. S. 277, 2 S. Ct. 677, 27 L. ed. 724.

¹⁰⁸ *Retzer v. Wood*, 109 U. S. 185, 3 S. Ct. 164, 27 L. ed. 900.

¹⁰⁹ *Scholey v. Rew*, 23 Wall. 346, 22 L. ed. 99.

— Uniformity.

The only limitation upon the power of Congress in the imposition of duties, imposts and excises is that they shall be uniform throughout the United States,¹¹⁰ and this requirement is not strictly a limitation, but prescribes the mode of exercise of the power.¹¹¹ The uniformity required is not an intrinsic uniformity relating to the inherent character of the tax as respects its operation on individuals; it is a geographical uniformity, requiring the same plan and method to be followed throughout the United States.¹¹² That a tax may affect only one class of persons is no objection to it, if it affects all of that class equally, and operates with the same force in every place where the subject is found;¹¹³ the object of this clause was to protect states from discrimination by Congress which would operate unfairly upon some states and not equally upon others.¹¹⁴ "Throughout the United States" must be understood to mean the states whose people united to form the constitution, and such as have been admitted to the Union upon an equality with them; so territory acquired by conquest and cession becomes appurtenant to, but not part of, the United States within the meaning of this clause.¹¹⁵

¹¹⁰ *License Cases*, 5 Wall. 471, 18 L. ed. 497; *United States v. Singer*, 15 Wall. 111, 21 L. ed. 49; *United States v. Three Tons of Coal*, 6 Biss. 400, Fed. Cas. No. 16,515; *Pollock v. Farmers' etc. Co.*, 157 U. S. 593, 15 S. Ct. 694, 39 L. ed. 759.

¹¹¹ *Veazie Bank v. Fenno*, 8 Wall. 540.

¹¹² *Knowlton v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 44 L. ed. 969.

¹¹³ *Head Money Cases* [*Edye v. Robertson*], 112 U. S. 580, 5 S. Ct. 247, 28 L. ed. 798; *State Board v. Central R. R.*, 48 N. J. L. 290, 4 Atl. 624.

¹¹⁴ *Downes v. Bidwell*, 182 U. S. 243, 21 S. Ct. 783, 45 L. ed. 1068.

¹¹⁵ *Downes v. Bidwell*, 182 U. S. 243, 21 S. Ct. 783, 45 L. ed. 1068.

2. To borrow money on the credit of the United States.

The Power Generally.

The power of Congress to borrow money, thus expressly granted, is free and unburdened,¹ and includes the power to issue securities or evidences of debt for the money borrowed,² or for capital and commodities of which money is the representative,³ and to issue treasury notes.⁴ "Money" is gold and silver, or the lawful circulating medium of the country, and includes bank notes.⁵ "On the credit of the United States" authorizes the issue of bills or notes by the government to circulate as money;⁶ for in issuing such paper the government is in effect borrowing on the credit of these promises.⁷ Bills of credit may be issued by Congress under this clause,⁸ and the circulation of any notes not issued by or under the authority of Congress may be restrained.⁹

¹ *Weston v. Charleston*, 2 Pet. 465, 7 L. ed. 481; *Banks v. Mayor*, 7 Wall. 23, 19 L. ed. 57; *Legal Tender Cases* [*Juillard v. Greenman*], 110 U. S. 444, 4 S. Ct. 128, 28 L. ed. 204; *Van Husen v. Kanouse*, 13 Mich. 309; *Schollenberger v. Brinton*, 52 Pa. St. 66; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 499.

² *Hepburn v. Griswold*, 8 Wall. 616, 19 L. ed. 513; *Hague v. Powers*, 39 Barb. Ch. 427; *Thayer v. Hedges*, 22 Ind. 282; *George v. Concord*, 45 N. H. 434.

³ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

⁴ *Thorndike v. United States*, 2 Mason, 18, Fed. Cas. No. 13,987; *Pennsylvania Cases*, 52 Pa. St. 15; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

⁵ *Mann v. Mann*, 1 Johns. Ch. 236; *Ex parte Prince*, 27 Fla. 203, 28 Am. St. Rep. 71, 9 South. 660.

⁶ *Craig v. Missouri*, 4 Pet. 435, 7 L. ed. 903; *Legal Tender Cases*, 110 U. S. 442, 4 S. Ct. 128, 28 L. ed. 204; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *The Floyd Acceptances*, 7 Wall. 675, 19 L. ed. 169.

⁷ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Bank v. Supervisors*, 7 Wall. 26.

⁸ *Veazie Bank v. Fenno*, 8 Wall. 548, 19 L. ed. 482; *Legal Tender Cases*, 12 Wall. 543, 20 L. ed. 287; *Craig v. Missouri*, 4 Pet. 435, 7 L. ed. 903.

⁹ *Veazie Bank v. Fenno*, 8 Wall. 549, 19 L. ed. 482; *National Bank v. United States*, 101 U. S. 6, 25 L. ed. 979.

Legal Tender.

The clauses granting to Congress power to coin money (art. I, § 8, cl. 5), and prohibiting the states from emitting bills of credit (art. I, § 10, cl. 1), do not impliedly prohibit Congress from making treasury notes legal tender,¹⁰ and while no such power is expressly granted by the constitution,¹¹ the authority is necessarily implied¹² as a means to the exercise of the functions of government.¹³ It is a necessary incident of sovereignty.¹⁴ If, in the judgment of Congress, it is necessary, in order to enhance the credit of the government's promises, it may make them legal tender.¹⁵ Congress may make treasury notes legal tender,¹⁶ and, while such notes are only the representatives of money, they may be made a substitute therefor.¹⁷

This power is not to be resorted to except upon extraordinary occasions or public exigencies of great importance;¹⁸ but it does not exist solely as an incident of the war power, and may

¹⁰ *Legal Tender Cases*, 12 Wall. 547, 20 L. ed. 287.

¹¹ *Hepburn v. Griswold*, 8 Wall. 614, 19 L. ed. 513.

¹² *Lick v. Faulkner*, 25 Cal. 404.

¹³ *Banks v. Mayor*, 7 Wall. 16, 19 L. ed. 57; *Juillard v. Greenman*, 10 Wall. 439, 28 L. ed. 204.

¹⁴ *Van Husen v. Kanouse*, 13 Mich. 303; *Maynard v. Newman*, 1 Nev. 271; *George v. Concord*, 45 N. H. 434; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Schollenberger v. Brinton*, 52 Pa. St. 100; *Brown v. Welch*, 26 Ind. 116.

¹⁵ *Wood v. Butler*, 6 Allen, 516; *Hague v. Powers*, 39 Barb. Ch. 427; *Lick v. Faulkner*, 25 Cal. 404; *Reynolds v. Bank of Indiana*, 18 Ind. 467; *Thayer v. Hedges*, 23 Ind. 141; *Brown v. Welch*, 26 Ind. 116; *Horntrager v. Bates*, 18 Iowa, 174; *Van Husen v. Kanouse*, 13 Mich. 303; *Warmbold v. Schlichting*, 16 Iowa, 243; *Riddlesbarger v. McDaniel*, 38 Mo. 138; *Verges v. Giboney*, 38 Mo. 458; *Maynard v. Newman*, 1 Nev. 271; *Carpenter v. Northfield Bank*, 39 Vt. 49; *Breitenbach v. Turner*, 18 Wis. 140; *Warner v. Sauk Co.*, 20 Wis. 494.

¹⁶ *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287; *Juillard v. Greenman*, 110 U. S. 438, 4 S. Ct. 124, 28 L. ed. 204; *Dooley v. Smith*, 13 Wall. 604, 20 L. ed. 547; *Railroad Co. v. Johnson*, 15 Wall. 195, 21 L. ed. 178; *United States v. Reese*, 92 U. S. 253, 23 L. ed. 563; *Bissell v. Heyward*, 96 U. S. 587, 24 L. ed. 678.

¹⁷ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 426.

¹⁸ *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287.

be exercised in time of peace or war.¹⁹ Debts contracted before, as well as after the passage of the legal tender acts are payable in treasury notes,²⁰ and those acts do not impair the obligation of contracts.²¹ Where the contract is to pay in a particular kind of money, as "gold" or "specie," it cannot be discharged in legal tender notes;²² but where the covenant is to pay in "lawful money," in "gold or its equivalent," or in "specie or its equivalent," it is deemed to be one for the payment of any kind of money which is legal tender.²³ The "debts" contemplated by the legal tender cases are debts arising on contract and demand and do not include taxes.²⁴

Effect on States' Taxing Power.

The power to issue securities being an incident of the power to borrow money, the securities thus issued are clearly instruments of the federal government exempt from state taxation.²⁵

¹⁹ *Juillard v. Greenman*, 110 U. S. 436, 4 S. Ct. 124, 28 L. ed. 204.

²⁰ *Legal Tender Cases*, 12 Wall. 553, 20 L. ed. 287 [overruling *Hepburn v. Griswold*, 8 Wall. 607, 19 L. ed. 513]; *Dooley v. Smith*, 13 Wall. 606, 20 L. ed. 547; *Juillard v. Greenman*, 110 U. S. 438, 4 Sup. Ct. 124, 28 L. ed. 204; *McElderry v. Jones*, 67 Ala. 205; *People v. Cook*, 44 Cal. 640; *Black v. Lusk*, 69 Ill. 76; *Belford v. Woodward*, 158 Ill. 129, 41 N. E. 1099, 29 L. R. A. 593; *Bowen v. Clark*, 46 Ind. 410; *Wells v. Bobb*, 9 Bush, 32.

²¹ *Faw v. Marsteller*, 2 Cr. 32, 2 L. ed. 191; *Legal Tender Cases*, 12 Wall. 553, 20 L. ed. 287; *Juillard v. Greenman*, 110 U. S. 438, 4 S. Ct. 124, 28 L. ed. 204.

²² *Bronson v. Rodes*, 7 Wall. 250, 19 L. ed. 141; *Butler v. Horwitz*, 7 Wall. 258, 19 L. ed. 149; *Hepburn v. Griswold*, 8 Wall. 607, 19 L. ed. 513; *Gregory v. Morris*, 96 U. S. 625, 24 L. ed. 740; *Dutton v. Palairot*, 154 U. S. 563, 14 S. Ct. 1200; *Dewing v. Sears*, 11 Wall. 380, 20 L. ed. 189; *Trebilcock v. Wilson*, 12 Wall. 695, 20 L. ed. 460; *McGoon v. Shirk*, 54 Ill. 411, 5 Am. Rep. 124; *Churchman v. Martin*, 54 Ind. 384.

²³ *United States v. Webster*, 2 Ware (Dav.), 48, Fed. Cas. No. 16,658; *Davis v. Burton*, 52 Pa. St. 9; *Reese v. Stearns*, 29 Cal. 273; *Wells, Fargo & Co. v. Van Sickle*, 6 Nev. 46; *Jones v. Smith*, 48 Barb. 552; *Atkinson v. Lainer*, 69 Ga. 460.

²⁴ *Lane County v. Oregon*, 7 Wall. 79, 19 L. ed. 101; *Hagar v. Reclamation Dist.*, 111 U. S. 706, 4 S. Ct. 766, 28 L. ed. 569; *Whitaker v. Haley*, 2 Or. 128; *Illinois v. Wright*, 28 Ill. 509.

²⁵ *McCulloch v. Maryland*, 4 Wheat. 439, 4 L. ed. 579; *Weston v. Charleston*, 2 Pet. 449, 7 L. ed. 481; *Bank of Commerce v. New York*,

This immunity from state taxation extends to all government securities, such as certificates of indebtedness given in payment for supplies,²⁶ United States bonds,²⁷ stock of the United States issued as security for its indebtedness,²⁸ government notes.²⁹ The income derived from interest paid on government bonds is also exempt from taxation.³⁰ So, also, a state cannot tax the capital stock of a corporation invested in federal securities,³¹ but shares of stock in such a corporation may be taxed in the hands of individual holders.³²

A distinction is to be drawn between a tax upon property and a tax upon franchises,³³ and while a state cannot tax capital or property invested in federal securities, a tax upon franchises based upon capital is valid, notwithstanding that capital is in-

2 Black, 629, 17 L. ed. 451; *Bank Tax Cases*, 2 Wall. 200, 17 L. ed. 793; *Van Allen v. Assessors*, 3 Wall. 573, 18 L. ed. 229; *People v. Commissioners*, 4 Wall. 244, 18 L. ed. 344; *Hamilton Co. v. Massachusetts*, 6 Wall. 639, 18 L. ed. 904; *Society for Savings v. Coite*, 6 Wall. 604, 18 L. ed. 897; *Austin v. Aldermen*, 7 Wall. 699, 19 L. ed. 224; *Grether v. Wright*, 75 Fed. 753; *State v. City of Newark*, 39 N. J. L. 382.

²⁶ *Banks v. Mayor*, 7 Wall. 23, 19 L. ed. 57; *Bank v. Supervisors*, 7 Wall. 30, 19 L. ed. 60; *State v. Haight*, 34 N. J. L. 130.

²⁷ *Bank of Commerce v. New York*, 2 Black, 632, 17 L. ed. 451; *Grether v. Wright*, 75 Fed. 753; *Chicago v. Lunt*, 52 Ill. 414; *Newark City Bank v. Assessor*, 30 N. J. L. 13.

²⁸ *Weston v. Charleston*, 2 Pet. 469, 7 L. ed. 481; *Bank of Commerce v. New York*, 2 Black, 629, 17 L. ed. 451; *Banks v. Mayor*, 7 Wall. 24, 19 L. ed. 57.

²⁹ *Bank v. Supervisors*, 7 Wall. 30, 19 L. ed. 60; *Mitchell v. Board*, 91 U. S. 208; *Ogden v. Walker*, 59 Ind. 464; *Shotwell v. Moore*, 45 Ohio St. 640, 16 N. E. 471.

³⁰ *Bank of Kentucky v. Commonwealth*, 4 Bush (Ky.), 48; *Opinion of Justices*, 53 N. H. 636.

³¹ *Bank of Commerce v. New York*, 2 Black, 628, 17 L. ed. 451; *Bank Tax Case*, 2 Wall. 210, 17 L. ed. 793; *Van Allen v. Assessors*, 3 Wall. 592, 18 L. ed. 229; *Maguire v. Board*, 71 Ala. 420; *Mutual Life Ins. Co. v. Haight*, 34 N. J. L. 130; *Wright v. Stills*, 27 Ind. 341; *State v. Rogers*, 79 Mo. 291.

³² *Provident Inst. v. Massachusetts*, 6 Wall. 629, 18 L. ed. 907; *Palmer v. McMahon*, 133 U. S. 666, 10 S. Ct. 326, 33 L. ed. 772; *Stetson v. Bangor*, 56 Me. 279; *People v. Commissioners*, 35 N. Y. 426; *Frazier v. Seibern*, 16 Ohio St. 622.

³³ *Bank Tax Case*, 2 Wall. 210, 17 L. ed. 793.

vested in United States bonds.³⁴ A statute requiring savings banks to pay a tax of a certain percentage upon the amount of their deposits is a franchise tax.³⁵ A tax upon inheritance and legacies is not upon property, but upon its transmission.³⁶ Accordingly, a state inheritance tax law applies to legacies of United States securities.³⁷

National banks being agents of the federal government, their operations cannot be impeded by state taxation.³⁸ This rule has, however, been relaxed by Congress,³⁹ and the states may now tax the shares of national banks in individual hands, if national banks are not discriminated against.⁴⁰ But this waiver of the exemption by Congress is to be strictly construed, and taxation in any other manner than prescribed by Congress is unconstitutional;⁴¹ so a state may tax shares held by individuals although the bank's capital is invested in United States bonds.⁴²

³⁴ *Society for Savings v. Coite*, 6 Wall. 605, 18 L. ed. 897, affirming 32 Conn. 184; *Home Ins. Co. v. New York*, 134 U. S. 598, 10 S. Ct. 594, 33 L. ed. 1025, affirming 92 N. Y. 341; *New York v. Roberts*, 171 U. S. 664, 19 S. Ct. 60, 43 L. ed. 343.

³⁵ *Provident Inst. v. Massachusetts*, 6 Wall. 630, 18 L. ed. 907.

³⁶ *United States v. Perkins*, 163 U. S. 630, 16 S. Ct. 1073, 41 L. ed. 287; *Magoun v. Illinois etc. Bank*, 170 U. S. 290, 18 S. Ct. 596, 42 L. ed. 1037; *High v. Coyne*, 92 Fed. 451; *Storrs v. St. Luke's Hosp.*, 180 Ill. 375, 72 Am. St. Rep. 215, 54 N. E. 187.

³⁷ *Plummer v. Coler*, 178 U. S. 115, 20 S. Ct. 829, 44 L. ed. 998; *Matter of Sherman*, 153 N. Y. 4, 46 N. E. 1033.

³⁸ *McCulloch v. Maryland*, 4 Wheat. 439, 4 L. ed. 579; *Osborne v. United States Bank*, 9 Wheat. 859, 6 L. ed. 204; *Bank of Commerce v. New York*, 2 Black. 620, 17 L. ed. 451; *Bank Tax Cases*, 2 Wall. 200, 17 L. ed. 793; *Owensboro Bank v. Owensboro*, 173 U. S. 667, 19 S. Ct. 537, 43 L. ed. 850; *Pittsburgh v. National Bank*, 55 Pa. St. 45; *Collins v. Chicago*, 4 Biss. 472, Fed. Cas. No. 3011.

³⁹ *Rev. Stats.*, sec. 5219.

⁴⁰ *Lionberger v. Rouse*, 9 Wall. 477, 19 L. ed. 721; *Aberdeen Bank v. Chehalis Co.*, 160 U. S. 449, 17 S. Ct. 632, 41 L. ed. 1069; *Pollard v. State*, 65 Ala. 630; *Bank of Albia v. Albia*, 86 Iowa, 37, 52 N. W. 336.

⁴¹ *Lionberger v. Rouse*, 9 Wall. 468, 19 L. ed. 721; *Carthage v. First Nat. Bank*, 71 Mo. 588, 36 Am. Rep. 494.

⁴² *People v. Commissioners*, 4 Wall. 259, 18 L. ed. 344; *National Bank v. Commonwealth*, 9 Wall. 353, 19 L. ed. 701; *Cummings v. National Bank*, 101 U. S. 156, 25 L. ed. 903; *Van Slyke v. Wisconsin*, 154 U. S. 581, 14 S. Ct. 1168, 20 L. ed. 240; *Merchants' Nat. Bank v. Pennsylvania*, 167 U. S. 466, 17 S. Ct. 831, 42 L. ed. 236.

Where shares of state banks are exempt, no tax can be laid on shares of national banks.⁴³ The fact that there are no state banks in existence in a particular state does not affect the state's right to tax national bank shares;⁴⁴ but where there are such banks and they are exempt from taxation or are taxed in some other manner than on their shares, a tax on national bank shares is invalid,⁴⁵ and where a general law allows taxpayers to deduct bona fide debts from credits subject to taxation, such privilege must extend to owners of national bank stock.⁴⁶ If, however, a holder of national bank shares has no debts to deduct, he cannot object that the state law does not allow deduction in case of national bank stock.⁴⁷ The provisions of the act of Congress cannot be evaded by assessing shares of national banks at an excessive value.⁴⁸ The act of Congress does not contemplate that the taxation of state and national banks shall be equal; its object is to prevent discrimination.⁴⁹ A statute taxing national bank stock and allowing no deduction on account of real estate owned by the bank is not invalid, such shares being the property of the shareholder, while the real estate is the property of the bank.⁵⁰

⁴³ *Boyer v. Boyer*, 113 U. S. 695, 5 S. Ct. 706, 28 L. ed. 1089.

⁴⁴ *Smith v. Webb*, 11 Minn. 507.

⁴⁵ *City Bank v. Paducah*, 2 Flipp, 66, Fed. Cas. 2743; *McHenry v. Downer*, 116 Cal. 25, 47 Pac. 780, 45 L. R. A. 737; *Utica v. Churchill*, 33 N. Y. 231.

⁴⁶ *Whitbeck v. Mercantile Bank*, 127 U. S. 199, 8 S. Ct. 1121, 32 L. ed. 118; *Supervisors v. Stanley*, 105 U. S. 308, 26 L. ed. 1044; *Boyer v. Boyer*, 113 U. S. 695, 5 S. Ct. 709, 28 L. ed. 1089; *Mercantile Bank v. New York*, 121 U. S. 152, 7 S. Ct. 833, 30 L. ed. 895; *Richards v. Rock Rapids*, 31 Fed. 512; *Nevada Nat. Bank v. Dodge*, 119 Fed. 57.

⁴⁷ *Supervisors v. Stanley*, 105 U. S. 315, 26 L. ed. 1044; *Palmer v. McMahon*, 133 U. S. 665, 10 S. Ct. 326, 33 L. ed. 772; *Silver Bow Co. v. Davis*, 6 Mont. 316, 12 Pac. 693; *Rosenberg v. Weekes*, 67 Tex. 585, 4 S. W. 901.

⁴⁸ *People v. Weaver*, 100 U. S. 543, 25 L. ed. 705; *Pelton v. National Bank*, 101 U. S. 145, 25 L. ed. 901; *Albany Nat. Bank v. Maher*, 19 Blatchf. 177, 6 Fed. 419; *Railroad Co. v. Equalizers*, 85 Fed. 307.

⁴⁹ *Davenport Bank v. Board of Equalization*, 123 U. S. 85, 8 S. Ct. 73, 31 L. ed. 94; *First Nat. Bank v. Stone*, 88 Fed. 411.

⁵⁰ *People's Nat. Bank v. Marye*, 107 Fed. 570.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

What Constitutes Commerce.

"Commerce," as used in this clause, comprehends every species of commercial intercourse between the United States and foreign nations, between the states and with Indian tribes.¹ The term has reference to trade² or traffic, and the interchange of commodities,³ but commerce is more than traffic; it is commercial intercourse between nations and parts of nations, in all its branches.⁴ "Trade" comprehends exchange by barter and buying and selling for money,⁵ but commerce is not limited to mere buying and selling; it embraces all commercial intercourse, whether by land or water,⁶ and includes communication by telegraph.⁷

Transportation is an element of commerce;⁸ the transporta-

¹ *Gibbons v. Ogden*, 9 Wheat. 193, 6 L. ed. 23; *Wabash etc. Ry. v. Illinois*, 118 U. S. 573, 7 S. Ct. 11, 30 L. ed. 244; *Leisy v. Hardin*, 135 U. S. 111, 10 S. Ct. 685, 34 L. ed. 128; *City of Huntington v. Mahan*, 142 Ind. 698, 51 Am. St. Rep. 202, 42 N. E. 463.

² *United States v. Bailey*, 1 McLean, 234, Fed. Cas. No. 14,495.

³ *The Daniel Ball*, 10 Wall. 557, 19 L. ed. 999.

⁴ *Gibbons v. Ogden*, 9 Wheat. 189, 6 L. ed. 23; *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678; *Groves v. Slaughter*, 15 Pet. 449, 10 L. ed. 800; *United States v. Holiday*, 3 Wall. 417, 18 L. ed. 182; *Mitchell v. Steelman*, 8 Cal. 368; *People v. Brooks*, 4 Denio, 469; *Moor v. Veazie*, 32 Me. 343, 52 Am. Dec. 655.

⁵ *May v. Sloan*, 101 U. S. 237, 25 L. ed. 797.

⁶ *Case of State Freight Tax*, 15 Wall. 275, 21 L. ed. 146; *The Clinton Bridge*, 10 Wall. 454, 19 L. ed. 969; *South Carolina v. Georgia*, 93 U. S. 10, 23 L. ed. 782; *Railroad v. Fuller*, 17 Wall. 568, 21 L. ed. 710; *Monongahela Nav. Co. v. United States*, 148 U. S. 335, 13 S. Ct. 622, 37 L. ed. 463; *Lord v. Steamship Co.*, 102 U. S. 541, 26 L. ed. 224.

⁷ *Pensacola etc. Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 9, 24 L. ed. 708; *Telegraph Co. v. Texas*, 105 U. S. 464, 26 L. ed. 1067; *Western Union Tel. Co. v. Pendleton*, 122 U. S. 356, 7 S. Ct. 1126, 30 L. ed. 1187; *Ratterman v. Western Union Tel. Co.*, 127 U. S. 425, 8 S. Ct. 1127, 32 L. ed. 229; *Western Union Tel. Co. v. James*, 162 U. S. 654, 16 S. Ct. 934, 40 L. ed. 1105.

⁸ *Case of State Freight Tax*, 15 Wall. 275, 21 L. ed. 146; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Henderson v. Mayor*, 92 U. S. 259, 23 L. ed. 543; *Railroad Co. v. Husen*, 95 U. S. 473, 24 L.

tion of articles of trade for purposes of exchange or sale;⁹ transportation of passengers.¹⁰ The handling of subjects of interstate commerce while in transit is a part of the transportation.¹¹ Commerce does not consist alone in the transportation of articles, but includes also the contracting for the sale of articles, and their delivery in another state,¹² for sale is itself an essential ingredient of intercourse.¹³

Navigation is included in the term "commerce,"¹⁴ and the power of Congress to regulate commerce embraces control of navigable waters,¹⁵ accessible from a state other than that in which they lie.¹⁶ The powers authorizes such legislation as will

ed. 527; *United States v. Trans-Missouri etc. Assn.*, 166 U. S. 312, 17 S. Ct. 548, 41 L. ed. 1007; *Kaieser v. Illinois Cent. R. R.*, 5 McCrary, 499, 18 Fed. 153; *Carton v. Illinois Cent. R. R.*, 59 Iowa, 151, 44 Am. Rep. 674, 13 N. W. 68; *State v. Chicago etc. Ry.*, 40 Minn. 267, 12 Am. St. Rep. 730, 41 N. W. 1047.

⁹ *Case of State Freight Tax*, 15 Wall. 275, 21 L. ed. 146; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Champion v. Ames*, 188 U. S. 321, 23 S. Ct. 321, 47 L. ed. 492; *Central Stock Yards Co. v. Louisville etc. Ry. Co.*, 118 Fed. 113; *Louisville etc. R. R. v. Railroad Commission*, 19 Fed. 707.

¹⁰ *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *Railroad Co. v. Husen*, 95 U. S. 460, 24 L. ed. 527; *Head Money Cases*, 112 U. S. 591, 5 S. Ct. 247, 28 L. ed. 798.

¹¹ *Rhodes v. Iowa*, 170 U. S. 426, 18 S. Ct. 664, 42 L. ed. 1088.

¹² *Addyston etc. Co. v. United States*, 175 U. S. 246, 20 S. Ct. 96, 44 L. ed. 136.

¹³ *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678.

¹⁴ *Gibbons v. Ogden*, 9 Wheat. 189, 6 L. ed. 23; *United States v. Coombs*, 12 Pet. 78, 9 L. ed. 1004; *Cooley v. Board of Wardens*, 12 How. 316, 13 L. ed. 996; *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *South Carolina v. Georgia*, 93 U. S. 10, 23 L. ed. 782; *New York v. Miln*, 11 Pet. 134, 9 L. ed. 648; *Railroad v. Fuller*, 17 Wall. 568, 21 L. ed. 710; *The Wilson v. United States*, 1 Brock. 423, Fed. Cas. No. 17,846; *People v. Brooks*, 4 Denio, 469.

¹⁵ *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999; *New York v. Miln*, 11 Pet. 134, 9 L. ed. 648; *Gibbons v. Ogden*, 9 Wheat. 197, 6 L. ed. 23; *Bridge Co. v. United States*, 105 U. S. 470, 26 L. ed. 1143; *Escandaba etc. Co. v. Chicago*, 107 U. S. 678, 2 S. Ct. 185, 27 L. ed. 442.

¹⁶ *Gilman v. Philadelphia*, 3 Wall. 725, 18 L. ed. 96; *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999; *The Thomas Swan*, 6 Ben. 45, Fed. Cas. No. 13,931; *Hatch v. Willamette I. B. Co.*, 7 Saw. 127, 6 Fed. 326.

insure convenient and safe navigation on such navigable waters,¹⁷ and keep them free from any obstruction to their navigation,¹⁸ and Congress may remove all such obstructions,¹⁹ whether caused by state action or otherwise.²⁰ But in order to bring obstructions to navigation on waters within a state within federal cognizance, a statute is necessary.²¹ It is for Congress to determine what shall or shall not be deemed an obstruction to navigation,²² and a bridge may be authorized against the consent of a state.²³ Navigation upon rivers wholly within a state and not accessible from other states is within the control of the state wherein they lie,²⁴ and even where such rivers wholly within a state are accessible from other states, they are subject to state control in the absence of congressional action.²⁵

Navigability in fact is the test of the character of a river,²⁶ and all those rivers must be regarded as public navigable rivers which are, or may be, used as highways of commerce, over which trade and travel are, or may be, conducted in customary modes,²⁷ or which form, in their ordinary condition, by them-

¹⁷ *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999.

¹⁸ *Gilman v. Philadelphia*, 3 Wall. 724, 18 L. ed. 96; *South Carolina v. Georgia*, 93 U. S. 12, 23 L. ed. 782; *Lord v. Steamship Co.*, 102 U. S. 541, 26 L. ed. 224; *Newport etc. Co. v. United States*, 18 Fed. Cas. (No. 10,186) 125.

¹⁹ *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999; *Monongahela Nav. Co. v. United States*, 148 U. S. 335, 13 S. Ct. 322, 37 L. ed. 463.

²⁰ *Gilman v. Philadelphia*, 3 Wall. 725, 18 L. ed. 96.

²¹ *United States v. Bellingham etc. Co.*, 81 Fed. 661.

²² *South Carolina v. Georgia*, 93 U. S. 12, 23 L. ed. 782; *Pennsylvania v. Wheeling Bridge Co.*, 18 How. 430, 15 L. ed. 435; *Miller v. Mayor*, 18 Blatchf. 215, 10 Fed. 516.

²³ *Decker v. Baltimore etc. R. R.*, 30 Fed. 726.

²⁴ *Veazie v. Moor*, 14 How. 571, 14 L. ed. 545; *Morse v. Home Ins. Co.*, 30 Wis. 506.

²⁵ *Escandaba Co. v. Chicago*, 107 U. S. 678, 2 S. Ct. 185, 27 L. ed. 442; *Cardwell v. Bridge Co.*, 113 U. S. 208, 5 S. Ct. 423, 28 L. ed. 959; *Harman v. Chicago*, 147 U. S. 413, 13 S. Ct. 306, 37 L. ed. 216.

²⁶ *Genesee Chief v. Fitzhugh*, 12 How. 456, 13 L. ed. 1058; *The Daniel Ball*, 10 Wall. 563, 19 L. ed. 999.

²⁷ *The Daniel Ball*, 10 Wall. 563, 19 L. ed. 999; *The Montello*, 20 Wall. 439, 22 L. ed. 391; *Grand Trunk Ry. v. Backus*, 46 Fed. 214; *Scranton v. Wheeler*, 57 Fed. 810.

selves, or by uniting with other waters, a continued highway,²⁸ and which will carry products and merchandise to and from the inhabitants of the banks thereof.²⁹ The navigability of a river does not presuppose depth enough to permit of passage of boats at all parts,³⁰ and a stream which is navigable for six months in the year is a navigable water.³¹ But a stream which will float logs only at high water cannot be deemed navigable;³² and a stream is not navigable unless so for some general and useful purpose.³³

Nature and Origin of Power to Regulate.

The right of intercourse derives its source from those laws whose authority is acknowledged by civilized man throughout the world.³⁴ The subject is of national importance and admits and requires uniformity of regulation,³⁵ and the power to regulate it so far as it is "with foreign nations, among the several states and with the Indian tribes," which previously existed in the states, and which the constitution conferred upon Congress,³⁶ is paramount over all legislative powers,³⁷ acknowledging no limitations other than those prescribed in the constitution.³⁸

²⁸ *Escandaba Co. v. Chicago*, 107 U. S. 682, 7 S. Ct. 188, 27 L. ed. 442; *Miller v. Mayor*, 109 U. S. 396, 3 S. Ct. 234, 27 L. ed. 971; *Ex parte Boyer*, 109 U. S. 631, 3 S. Ct. 435, 27 L. ed. 1056; *The Hazel Kirke*, 25 Fed. 605; *Decker v. Baltimore etc. R. R.*, 30 Fed. 725.

²⁹ *Little Rock Co. v. Brooks*, 39 Ark. 403, 43 Am. Rep. 280.

³⁰ *St. Anthony Falls etc. Co. v. St. Paul Water Commrs.*, 168 U. S. 359, 18 S. Ct. 157, 42 L. ed. 497; but see *Chisholm v. Caines*, 67 Fed. 294.

³¹ *Little Rock etc. Co. v. Brooks*, 39 Ark. 409, 43 Am. Rep. 280.

³² *Boyzer v. McMillan etc. Co.*, 105 Ala. 397, 53 Am. St. Rep. 133, 16 South. 924.

³³ *Groton v. Hurlbut*, 22 Conn. 186.

³⁴ *Gibbons v. Ogden*, 9 Wheat. 211, 6 L. ed. 23.

³⁵ *Welton v. Missouri*, 91 U. S. 280, 23 L. ed. 347.

³⁶ *South Carolina v. Georgia*, 93 U. S. 9, 23 L. ed. 782.

³⁷ *Smith v. Alabama*, 124 U. S. 473, 31 L. ed. 508.

³⁸ *Leisy v. Hardin*, 135 U. S. 100, 10 S. Ct. 685, 34 L. ed. 128; *Gibbons v. Ogden*, 9 Wheat. 196, 6 L. ed. 23; *Interstate Commerce Com. v. Brimson*, 154 U. S. 471, 14 S. Ct. 1131, 38 L. ed. 1047; *Addyston Pipe Co. v. United States*, 175 U. S. 228, 20 S. Ct. 96, 44 L. ed. 136; *Sang Lung v. Jackson*, 85 Fed. 505; *Mitchell v. Steelman*, 8 Cal. 372.

The power to regulate is the power to prescribe the rules by which commerce is to be governed;³⁹ it implies full power over the thing to be regulated, and excludes the action of all others that would perform the same operation on the same thing.⁴⁰ The power of Congress extends to the regulation of the external commerce of the nation as well as that among the states.⁴¹

The object of the commerce clause was to keep commercial intercourse free from all invidious and partial restraints,⁴² to place it beyond interruption from conflicting or hostile state laws,⁴³ and insure uniformity in regulations.⁴⁴ It was not designed to operate upon matters essentially local in their nature and extent, but to establish perfect equality amongst the states as to commercial rights.⁴⁵

Commerce "with foreign nations" signifies transactions which, at some stage of their progress, as regards individual states, must be extraterritorial,⁴⁶ and with citizens and subjects of foreign governments.⁴⁷ It includes all the means by which such commerce may be carried on, whether by free navi-

³⁹ *Gibbons v. Ogden*, 9 Wheat. 196, 6 L. ed. 23.

⁴⁰ *Gibbons v. Ogden*, 9 Wheat. 209, 6 L. ed. 23; *Passenger Cases*, 7 How. 555, 12 L. ed. 702; *United States v. New Bedford Bridge*, 1 Wood. & M. 430, Fed. Cas. No. 15,867.

⁴¹ *Brown v. Maryland*, 12 Wheat. 448, 6 L. ed. 678; *Passenger Cases*, 7 How. 395, 12 L. ed. 702; *Almy v. California*, 24 How. 173, 16 L. ed. 644; *People v. Brooks*, 4 Denio, 476.

⁴² *Gibbons v. Ogden*, 9 Wheat. 231, 6 L. ed. 23; *Mitchell v. Steelman*, 8 Cal. 374.

⁴³ *Southern S. S. Co. v. Port Wardens*, 6 Wall. 33, 18 L. ed. 749; *Webb v. Dunn*, 8 Fla. 724.

⁴⁴ *Railroad v. Richmond*, 19 Wall. 590, 22 L. ed. 173; *Welton v. Missouri*, 91 U. S. 280, 23 L. ed. 347; *Lehigh etc. R. R. v. Pennsylvania*, 145 U. S. 200, 36 L. ed. 672; *Broeck v. The J. M. Welch*, 18 Blatchf. 72, 2 Fed. 381; *McNaughton Co. v. McGirl*, 20 Mont. 130, 63 Am. St. Rep. 613, 49 Pac. 653.

⁴⁵ *Veazie v. Moor*, 14 How. 574; *United States v. E. C. Knight Co.*, 156 U. S. 15, 15 S. Ct. 255, 39 L. ed. 325; *The Katie*, 40 Fed. 482.

⁴⁶ *Veazie v. Moor*, 14 How. 574, 14 L. ed. 545; *Lord v. Steamship Co.*, 102 U. S. 541, 26 L. ed. 224.

⁴⁷ *United States v. Holliday*, 3 Wall. 417, 18 L. ed. 182; *Flannagan v. Philadelphia*, 22 Pa. 219.

gation of the waters of the several states, or by land across them.⁴⁸ "Among the several states" may be restricted to that commerce which concerns more than one state.⁴⁹ The power of Congress to "regulate commerce with the Indian tribes" does not authorize purely criminal laws;⁵⁰ its existence implies the right to exercise it whenever there is a subject to act upon,⁵¹ and it embraces all intercourse with the tribes and the personal conduct of other races with them.⁵²

Extent of the Power, in General.

The commerce power committed to Congress is unlimited, except by the constitution itself.⁵³ It includes power to prescribe rules by which it is to be governed and to control instrumentalities by which it may be carried on;⁵⁴ but the regulations must be regulations of commerce; supervisory powers over manufactures and production remain in the states,⁵⁵ while

⁴⁸ *Pennsylvania v. Wheeling Br.*, 18 How. 42; *Columbia Ins. Co. v. Peoria Br.*, 6 McLean, 70, Fed. Cas. No. 3046; *Jolly v. Terre Haute D. Co.*, 6 McLean, 237, Fed. Cas. No. 7441; *Corfield v. Coryell*, 4 Wash. C. C. 388, Fed. Cas. No. 3230.

⁴⁹ *Veazie v. Moor*, 14 How. 568, 14 L. ed. 545; *Passaic Bridges*, 3 Wall. 782, 16 L. ed. 799; *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999; *The Gretna Green*, 20 Fed. 902; *United States v. De Witt*, 9 Wall. 44, 19 L. ed. 593.

⁵⁰ *United States v. Kagama*, 118 U. S. 378, 6 S. Ct. 1109, 30 L. ed. 228.

⁵¹ *United States v. Forty-three Gallons of Whisky*, 93 U. S. 194, 23 L. ed. 846; *United States v. Forty-three Gallons of Whisky*, 108 U. S. 494, 2 S. Ct. 908.

⁵² *United States v. Martin*, 14 Fed. 821.

⁵³ *Gibbons v. Ogden*, 9 Wheat. 186, 6 L. ed. 23; *Welton v. Missouri*, 91 U. S. 280, 23 L. ed. 347; *Kidd v. Pearson*, 128 U. S. 17, 9 S. Ct. 6; *Addyston Pipe Co. v. United States*, 175 U. S. 228, 20 S. Ct. 96, 44 L. ed. 136; *Scranton v. Wheeler*, 179 U. S. 162, 21 S. Ct. 48, 45 L. ed. 126.

⁵⁴ *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 203, 5 S. Ct. 826, 29 L. ed. 158; *North Bloomfield etc. Min. Co. v. United States*, 88 Fed. 675.

⁵⁵ *Kidd v. Pearson*, 128 U. S. 21, 9 S. Ct. 6, 32 L. ed. 346; *United States v. Boyer*, 85 Fed. 433; *State v. Harrub*, 95 Ala. 187, 36 Am. St. Rep. 202, 10 South. 775; *Standard etc. Co. v. Attorney General*, 46 N. J. Eq. 270, 19 Am. St. Rep. 394.

the "due process of law" clause in the constitution does not limit the power of Congress to regulate commerce,⁵⁶ yet the power does not carry the right to impair constitutional guarantees of personal liberty.⁵⁷

This clause does not contemplate commerce which is entirely internal, which is carried on between individuals in a state, or between different parts of the same state, and does not extend to or affect other states,⁵⁸ and any act of Congress interfering with the exercise of powers retained by the states is unconstitutional and void.⁵⁹

The power to "regulate" has even been declared to embrace absolute prohibition.⁶⁰

Exclusive and Concurrent Powers.

Whatever subjects of the commerce power are in their nature national, or admit only of one uniform system of regulation, are within the legislative power of Congress exclusively;⁶¹ but such uniformity must be practicable.⁶² Not all subjects admit-

⁵⁶ *Addyston Pipe Co. v. United States*, 175 U. S. 228, 20 S. Ct. 96, 44 L. ed. 136.

⁵⁷ *Interstate Commerce Com. v. Brimson*, 154 U. S. 478, 14 S. Ct. 1125, 38 L. ed. 1047. See, also, *United States v. Joint Traffic Assn.*, 171 U. S. 571, 19 S. Ct. 32, 43 L. ed. 259.

⁵⁸ *Gibbons v. Ogden*, 9 Wheat. 194, 6 L. ed. 23; *Veazie v. Moor*, 14 How. 575, 14 L. ed. 545; affirming 32 Me. 364, 52 Am. Dec. 666; *Lord v. Steamship Co.*, 102 U. S. 543, 26 L. ed. 226; *United States v. New Bedford Bridge*, 1 Wood, & M. 417, Fed. Cas. No. 15,867; *The Bright Star*, Woolw. 275; *The Belfast v. Boon*, 41 Ala. 70.

⁵⁹ *Hall v. De Cuir*, 95 U. S. 512, 24 L. ed. 547; *Covington Br. Co. v. Kentucky*, 154 U. S. 209, 14 S. Ct. 1087, 38 L. ed. 962; *Geer v. Connecticut*, 161 U. S. 531, 16 S. Ct. 600, 40 L. ed. 793; *United States v. E. C. Knight Co.*, 156 U. S. 12, 15 S. Ct. 249, 39 L. ed. 325.

⁶⁰ *Champion v. Ames*, 188 U. S. 321, 23 S. Ct. 321, 47 L. ed. 492.

⁶¹ *Cooley v. Board of Wardens*, 12 How. 319, 13 L. ed. 996; *Case of State Freight Tax*, 15 Wall. 279, 21 L. ed. 146; *Welton v. Missouri*, 91 U. S. 280, 23 L. ed. 275; *Cardwell v. American Bridge Co.*, 113 U. S. 210, 5 S. Ct. 423, 28 L. ed. 959; *Robbins v. Shelby Co. Tax. Dist.*, 120 U. S. 492, 7 S. Ct. 592, 30 L. ed. 694; *Brown v. Houston*, 114 U. S. 631, 5 S. Ct. 1091, 29 L. ed. 257; *Walling v. Michigan*, 116 U. S. 455, 6 S. Ct. 454, 29 L. ed. 691.

⁶² *County of Mobile v. Kimball*, 102 U. S. 698, 26 L. ed. 238.

ting of uniformity of regulation however, are within the exclusive control of Congress.⁶³ Where the subjects do not call for uniform rules or national legislation, they may be regulated by the states in the absence of congressional action;⁶⁴ but a state statute in conflict with national law must give way.⁶⁵ Where the subjects are so national in character as to require that any legislation shall be uniform, the failure of Congress to act is tantamount to a declaration that so far as they are concerned commerce shall be left free and untrammelled.⁶⁶ In fact, the constitution, by its grant of power, impliedly declares that the commerce contemplated shall be free, except so far as Congress shall enact regulations,⁶⁷ and as congressional regulation may consist in abstaining from prescribing positive rules, the power to regulate cannot be deemed dormant because not affirmatively exercised.⁶⁸

The states have concurrent powers with Congress in matters which are local in their operation or which are mere aids to com-

⁶³ *Pound v. Turek*, 95 U. S. 462, 24 L. ed. 525; *Adams v. Ulmer*, 91 Me. 54, 39 Atl. 350; *J. S. Keator etc. Co. v. St. Croix etc. Corp.*, 72 Wis. 82, 7 Am. St. Rep. 848, 38 N. W. 536.

⁶⁴ *Gilman v. Philadelphia*, 3 Wall. 726, 18 L. ed. 96; *Ex parte McNeil*, 13 Wall. 240, 20 L. ed. 624; *Packet Co. v. Catlettsburg*, 105 U. S. 563, 25 L. ed. 1169; *Transportation Co. v. Parkersburg*, 107 U. S. 702, 27 L. ed. 584; *New York etc. R. R. v. New York*, 165 U. S. 631, 17 S. Ct. 419, 41 L. ed. 853; *Western Union Tel. Co. v. Pendleton*, 95 Ind. 13, 48 Am. Rep. 693; *Smith v. State*, 100 Tenn. 498, 46 S. W. 567, 41 L. R. A. 432.

⁶⁵ *Gulf etc. Ry. v. Hefley*, 158 U. S. 104, 15 S. Ct. 803, 39 L. ed. 910; *People v. Coleman*, 4 Cal. 46, 60 Am. Dec. 581.

⁶⁶ *Hinson v. Lott*, 8 Wall. 152, 19 L. ed. 387; *Tiernan v. Rinker*, 102 U. S. 127, 26 L. ed. 103; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 204, 5 S. Ct. 826, 29 L. ed. 158; *Brown v. Houston*, 114 U. S. 631, 5 S. Ct. 1096, 29 L. ed. 257; *Hall v. De Cuir*, 95 U. S. 490, 24 L. ed. 547; *Walling v. Michigan*, 116 U. S. 455, 6 S. Ct. 457, 29 L. ed. 691; *Bowman v. Chicago etc. Ry.*, 125 U. S. 493, 8 S. Ct. 1066, 31 L. ed. 700; *State v. Saunders*, 19 Kan. 130, 27 Am. Rep. 100, *Bagg v. Wilmington etc. R. R.*, 109 N. C. 279, 26 Am. St. Rep. 569, 14 S. E. 79, 14 L. R. A. 596; *Van Buren v. Downing*, 41 Wis. 127; *Arnold v. Yanders*, 56 Ohio St. 421, 60 Am. St. Rep. 755, 47 N. E. 51; *Comm. v. Philadelphia etc. Ry.*, 1 Pears. 379.

⁶⁷ *United States v. E. C. Knight Co.*, 156 U. S. 11, 15 S. Ct. 249, 39 L. ed. 325.

⁶⁸ *Smith v. Alabama*, 124 U. S. 473, 8 S. Ct. 564, 31 L. ed. 508.

merce;⁶⁹ or which relate to rights, duties and liabilities of citizens, although indirectly and remotely affecting operations of commerce;⁷⁰ e. g., the regulation of wharves;⁷¹ the establishment of buoys and beacons;⁷² the improvement of harbors⁷³ and navigable rivers,⁷⁴ and the collection of toll for such improvements;⁷⁵ the construction and regulation of wharves⁷⁶ and bridges;⁷⁷ the construction and regulation of log booms;⁷⁸ the

⁶⁹ *Cardwell v. American Bridge Co.*, 113 U. S. 210, 5 S. Ct. 423, 28 L. ed. 959.

⁷⁰ *Sherlock v. Alling*, 93 U. S. 104.

⁷¹ *Onachita Packet Co. v. Aiken*, 121 U. S. 446, 7 S. Ct. 907, 30 L. ed. 976; *Transportation Co. v. Parkersburg*, 107 U. S. 691, 2 S. Ct. 732, 27 L. ed. 584.

⁷² *County of Mobile v. Kimball*, 102 U. S. 691, 26 L. ed. 238; *Onachita Packet Co. v. Kimball*, 16 Fed. 890.

⁷³ *County of Mobile v. Kimball*, 102 U. S. 699, 26 L. ed. 238; *Monongahela Nav. Co. v. United States*, 148 U. S. 333, 13 S. Ct. 629, 37 L. ed. 463.

⁷⁴ *Huse v. Glover*, 119 U. S. 548, 7 S. Ct. 313, 30 L. ed. 487; *Sands v. Manistee River Imp. Co.*, 123 U. S. 295, 8 S. Ct. 116, 31 L. ed. 149; *Stockton v. Powell*, 29 Fla. 43, 10 South. 693, 15 L. R. A. 42; *Wisconsin River Imp. Co. v. Manson*, 43 Wis. 255, 28 Am. Rep. 542; *Thames Bank v. Lovell*, 18 Conn. 511, 46 Am. Dec. 332; *McReynolds v. Smallhouse*, 8 Bush, 447.

⁷⁵ *Huse v. Glover*, 119 U. S. 548, 7 S. Ct. 313, 30 L. ed. 487; *Onachita Packet Co. v. Aiken*, 121 U. S. 448, 7 S. Ct. 909, 30 L. ed. 976; *Sands v. Manistee River Imp. Co.*, 123 U. S. 296, 8 S. Ct. 117, 31 L. ed. 149.

⁷⁶ *Packet Co. v. Catlettsburg*, 105 U. S. 563, 26 L. ed. 1169; *Transportation Co. v. Parkersburg*, 107 U. S. 702, 2 S. Ct. 732, 27 L. ed. 584; *Onachita Packet Co. v. Aiken*, 121 U. S. 447, 7 S. Ct. 909, 30 L. ed. 976.

⁷⁷ *Pennsylvania v. Wheeling Bridge Co.*, 18 How. 530, 14 L. ed. 249; *Gilman v. Philadelphia*, 3 Wall. 728, 18 L. ed. 96; *Escandaba Co. v. Chicago*, 107 U. S. 683, 2 S. Ct. 185, 27 L. ed. 442; affirming 12 Fed. 777; *Cardwell v. American Bridge Co.*, 113 U. S. 209, 5 S. Ct. 423, 28 L. ed. 959; *Rhea v. Newport etc. R. R.*, 50 Fed. 20; *Hamilton v. Railroad*, 34 La. Ann. 973, 44 Am. Rep. 454; *Commissioners v. Board*, 39 Ohio St. 634; *Gulf etc. R. R. v. Dwyer*, 75 Tex. 580, 16 Am. St. Rep. 928, 12 S. W. 1002.

⁷⁸ *Hurman v. Beef Slough etc. Co.*, 8 Biss. 344, 1 Fed. 155; *J. S. Keator etc. Co. v. St. Croix etc. Corp.*, 72 Wis. 84, 7 Am. St. Rep. 850, 38 N. W. 537.

regulation of the business of floating logs;⁷⁹ prescribing harbor rules and regulations;⁸⁰ prescribing pilot laws and regulating charges;⁸¹ the enactment of quarantine laws.⁸² When, however, Congress has acted with relation to such matters as these, state laws in conflict with congressional action are void,⁸³ and while the commerce clause does not comprehend internal domestic commerce, the power enters the interior of every state whenever the interests of foreign or interstate commerce require.⁸⁴

State legislation in all matters in which the power is concurrent must not interfere with interstate or foreign commerce; whenever it does so, whether Congress has acted or not, it is void.⁸⁵ Obstacles or burdens laid upon commerce are "regulations,"⁸⁶ and state laws imposing them upon interstate or foreign commerce are void under this clause.⁸⁷ State constitu-

⁷⁹ *Harrigan v. Connecticut etc. Co.*, 129 Mass. 580, 37 Am. Rep. 387.

⁸⁰ *The James Gray v. The John Fraser*, 21 How. 187, 16 L. ed. 106; *Packet Co. v. Catlettsburg*, 105 U. S. 563, 26 L. ed. 1169; *The Baltic*, 2 Ben. 399; *The Helen*, 5 Hughes, 122, 1 Fed. 922.

⁸¹ *Southern S. S. Co. v. Port Wardens*, 6 Wall. 31; *Gibbons v. Ogden*, 9 Wheat. 207, 6 L. ed. 23; *Ex parte McNeil*, 13 Wall. 241, 20 L. ed. 624; *Cooley v. Board of Wardens*, 12 How. 319, 13 L. ed. 996; *The Glenearne*, 7 Saw. 202, 7 Fed. 607; *The Alcalde*, 12 Saw. 270, 3 Fed. 135.

⁸² *Morgan etc. Co. v. Louisiana*, 118 U. S. 455, 6 S. Ct. 1114, 30 L. ed. 237; *Missouri etc. Ry. v. Haber*, 169 U. S. 623, 18 S. Ct. 488, 42 L. ed. 878; *Train v. Boston Disinfecting Co.*, 144 Mass. 531, 59 Am. Rep. 116, 11 N. E. 536.

⁸³ *Crandall v. Nevada*, 6 Wall. 42, 18 L. ed. 745; *People v. Coleman*, 4 Cal. 46, 60 Am. Dec. 581.

⁸⁴ *Kidd v. Pearson*, 128 U. S. 17, 9 S. Ct. 6, 32 L. ed. 346.

⁸⁵ *Sherlock v. Alling*, 93 U. S. 102, 23 L. ed. 819; *Robbins v. Shelby Co. Taxing Dist.*, 120 U. S. 493, 7 S. Ct. 592, 30 L. ed. 694; *State v. Saunders*, 19 Kan. 127, 27 Am. Rep. 98.

⁸⁶ *Case of State Freight Tax*, 15 Wall. 232, 21 L. ed. 146; *Ward v. Maryland*, 12 Wall. 418, 20 L. ed. 449; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Henderson v. New York*, 92 U. S. 259, 23 L. ed. 543; *Chy Lung v. Freeman*, 92 U. S. 275, 23 L. ed. 550; *Railroad Co. v. Husen*, 95 U. S. 470, 24 L. ed. 527.

⁸⁷ *Hall v. De Cuir*, 95 U. S. 488, 24 L. ed. 547; *Welton v. Missouri*, 91 U. S. 282, 23 L. ed. 347; *Pickard v. Pullman etc. Car Co.*, 117

tional provisions, the necessary result of enforcing which is to limit or interfere with such commerce, are likewise void.⁸⁸ A state cannot authorize a corporation organized under its laws to do acts in its corporate name which will operate to restrain interstate commerce, e. g., to purchase the stock of competing corporations in order to create a monopoly.⁸⁹

Subjects of Regulation.

The commerce power embraces all instruments by which commerce may be carried on,⁹⁰ and all the immediate vehicles and agents for all purposes,⁹¹ as well as the articles carried,⁹² and negotiations leading up to interstate or foreign commerce.⁹³ The powers of Congress are not confined to instrumentalities known when the constitution was adopted but they keep pace with, and adapt themselves to, new developments,⁹⁴ and what is an article of commerce is to be determined by usages of the commercial world.⁹⁵

U. S. 49, 6 S. Ct. 642, 29 L. ed. 785; *In re Christian*, 39 Fed. 637; *Van Buren v. Downing*, 41 Wis. 127; *Council Bluffs v. Kansas etc. R.*, 45 Iowa, 338, 24 Am. Rep. 773.

⁸⁸ *Louisville etc. R. R. v. Eubank*, 184 U. S. 36, 22 S. Ct. 277, 47 L. ed. 416.

⁸⁹ *United States v. Northern Securities Co.*, 120 Fed. 721; affirmed *Adv. Sheets*, S. Ct. 1904.

⁹⁰ *Welton v. Missouri*, 91 U. S. 280, 23 L. ed. 347; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 204, 5 S. Ct. 828, 20 L. ed. 158; *In re Barber*, 39 Fed. 648.

⁹¹ *Mitchell v. Steelman*, 8 Cal. 363.

⁹² *Schollenberger v. Pennsylvania*, 171 U. S. 24, 18 S. Ct. 757, 43 L. ed. 57; *The Wilson v. United States*, 1 Brock. 423.

⁹³ *Robbins v. Shelby Co. Tax. Dist.*, 170 U. S. 497, 7 S. Ct. 592, 30 L. ed. 694; *Addyston Pipe Co. v. United States*, 175 U. S. 246, 20 S. Ct. 96, 44 L. ed. 136; *Le Loup v. Mobile*, 127 U. S. 646, 8 S. Ct. 1383, 32 L. ed. 311; *Wagner v. Meakins*, 92 Fed. 83; *Gunn v. White Sewing-machine Co.*, 57 Ark. 35, 38 Am. St. Rep. 226, 20 S. W. 592, 18 L. R. A. 206; *Coit v. Sutton*, 102 Mich. 327, 60 N. W. 691, 25 L. R. A. 619; *Toledo Com. Co. v. Glen Mfg. Co.*, 55 Ohio St. 222, 45 N. E. 198.

⁹⁴ *Pensacola etc. Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 9, 24 L. ed. 708; *In re Debs*, 158 U. S. 581, 15 S. Ct. 900, 39 L. ed. 1092; affirming 64 Fed. 750.

⁹⁵ *Bowman v. Chicago etc. Ry.*, 125 U. S. 501, 8 S. Ct. 689, 29 L. ed. 502.

Persons are subject to the commerce power when they conduct commerce or are employed by others who conduct it,⁹⁶ or when they are carried as passengers.⁹⁷ So Congress may prescribe rules for the shipping of seamen,⁹⁸ and for the regulation of seamen in the merchant service^{98a} and their contracts and liens,⁹⁹ and may prescribe rules for the government of pilots and fix their qualifications.¹⁰⁰ But state courts have declared that the passage of an act of Congress does not release pilots from a penalty incurred under a state law,¹⁰¹ nor does an act for the regulation of pilots supersede a state law providing for the licensing of pilots.¹⁰² The power extends to the enactment of a recording act for the security and protection of persons dealing in vessels,¹⁰³ and of persons furnishing labor or supplies to vessels,¹⁰⁴ and to the enactment of a law limiting ship owners' liability for losses.¹⁰⁵

⁹⁶ *Cooley v. Board of Wardens*, 12 How. 316, 13 L. ed. 996; *Cuban S. S. Co. v. Fitzpatrick*, 66 Fed. 67; *People v. Welch*, 141 N. Y. 266, 38 Am. St. Rep. 793, 36 N. E. 328, 24 L. B. A. 117.

⁹⁷ *Passenger Cases*, 7 How. 283, 12 L. ed. 702 (overruling *New York v. Miln*, 11 Pet. 136, on this point); *Crandall v. Nevada*, 6 Wall. 40; *Henderson v. New York*, 92 U. S. 269, 23 L. ed. 543; *Hall v. De Guir*, 95 U. S. 516, 24 L. ed. 547; *People v. Compagnie Generale, etc.*, 107 U. S. 60, 2 S. Ct. 88, 27 L. ed. 353; *In re Ah Fong*, 3 Saw. 152, Fed. Cas. No. 102; *Lin Sing v. Washburn*, 20 Cal. 534; *State v. S. S. Constitution*, 42 Cal. 588, 10 Am. Rep. 310; *Council Bluffs v. Kansas City etc. R. R.*, 45 Iowa, 349, 24 Am. Rep. 779.

⁹⁸ *The Bark Chusan*, 2 Story, 455, Fed. Cas. No. 2717.

^{98a} *Ex parte Pool*, 2 Va. Cas. 276.

⁹⁹ *The Bark Chusan*, 2 Story, 455, Fed. Cas. No. 2717.

¹⁰⁰ *Cooley v. Board of Wardens*, 12 How. 319, 13 L. ed. 996; *The South Cambria*, 27 Fed. 526; *State ex rel. v. Livandias*, 36 La. Ann. 127; *Webb v. Dunn*, 18 Fla. 728; *Dryden v. Commonwealth*, 16 B. Mon. 598; *Edwards v. Panama*, 1 Or. 418.

¹⁰¹ *Sturgis v. Spofford*, 45 N. Y. 446.

¹⁰² *Cisco v. Roberts*, 36 N. Y. 295.

¹⁰³ *White's Bank v. Smith*, 7 Wall. 655, 19 L. ed. 211; *Blanchard v. The Martha Washington*, 1 Cliff. 463, Fed. Cas. No. 1513; *Foster v. Chamberlain*, 41 Ala. 156; *Mitchell v. Steelman*, 8 Cal. 363; *Shaw v. McCandless*, 36 Miss. 296; *Best v. Staple*, 61 N. Y. 76; *Lawrence v. Hodges*, 92 N. C. 677, 53 Am. Rep. 437.

¹⁰⁴ *The Lottawanna*, 21 Wall. 577, 22 L. ed. 654.

¹⁰⁵ *Providence S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 589, 3 S. Ct.

Corporations, associations and partnerships, as well as individuals, are subject to the commerce power;¹⁰⁶ e. g., railroad companies,¹⁰⁷ steamship companies,¹⁰⁸ ferry companies,¹⁰⁹ sleeping-car companies,¹¹⁰ express companies,¹¹¹ telegraph companies,¹¹² bridge companies.¹¹³ It follows that states cannot exclude foreign corporations such as these when engaged in interstate or foreign commerce;¹¹⁴ nor can they impose limitations

386, 27 L. ed. 1038; *Butler v. Boston S. S. Co.*, 130 U. S. 555, 9 S. Ct. 618, 32 L. ed. 1017; *In re Garnett*, 141 U. S. 12, 11 S. Ct. 840, 35 L. ed. 631; *In re Transportation Co.*, 5 Fed. 614; *The Katie*, 40 Fed. 493.

¹⁰⁶ *Paul v. Virginia*, 8 Wall. 183, 19 L. ed. 357; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 204, 5 S. Ct. 828, 29 L. ed. 158; *Philadelphia S. S. Co. v. Pennsylvania*, 122 U. S. 343, 7 S. Ct. 1124, 30 L. ed. 1200; *Indiana v. Pullman Car Co.*, 11 Biss. 566, 16 Fed. 193; *Gunn v. White Sewing Mach. Co.*, 57 Ark. 33, 18 L. R. A. 206, 20 S. W. 592, 38 Am. St. Rep. 224; *McNaughton v. McGirl*, 20 Mont. 124, 63 Am. St. Rep. 610, 49 Pac. 651, 28 L. R. A. 367.

¹⁰⁷ *Case of State Freight Tax*, 15 Wall. 275, 21 L. ed. 146; *Railroad v. Husen*, 95 U. S. 469, 24 L. ed. 527; *California v. Pacific R. R.*, 127 U. S. 40, 32 L. ed. 150; *Kaiser v. Illinois Cent. R. R.*, 5 McCrary, 499, 18 Fed. 153; *Mobile etc. R. R. v. Sessions*, 28 Fed. 593.

¹⁰⁸ *Philadelphia S. S. Co. v. Pennsylvania*, 122 U. S. 338, 7 S. Ct. 1121, 30 L. ed. 1200.

¹⁰⁹ *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 212, 5 S. Ct. 833, 29 L. ed. 158.

¹¹⁰ *Pickard v. Pullman Southern Car Co.*, 117 U. S. 48, 6 S. Ct. 641, 29 L. ed. 785; *Pullman Southern Car Co. v. Nolan*, 22 Fed. 280; *Indiana v. Pullman Palace Car Co.*, 11 Biss. 561, 16 Fed. 193; *State v. Woodruff etc. Co.*, 114 Ind. 158, 15 N. E. 815.

¹¹¹ *Crutcher v. Kentucky*, 141 U. S. 56, 11 S. Ct. 851, 35 L. ed. 649; *Webster v. Bell*, 68 Fed. 185.

¹¹² *Telegraph Company v. Texas*, 105 U. S. 466, 26 L. ed. 1067; *Le Loup v. Mobile*, 127 U. S. 647, 8 S. Ct. 1380, 32 L. ed. 311; *St. Louis v. Western Union Tel. Co.*, 39 Fed. 60; *Muskogee Nat. Tel. Co. v. Hall*, 118 Fed. 382.

¹¹³ *Pennsylvania v. Wheeling etc. Bridge Co.*, 18 How. 430, 15 L. ed. 435; *Bridge Co. v. United States*, 105 U. S. 475, 26 L. ed. 1143; *Lorton v. North River Bridge Co.*, 153 U. S. 531, 14 S. Ct. 893, 38 L. ed. 808.

¹¹⁴ *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 185, 8 S. Ct. 737, 31 L. ed. 650; *Horn Silver Min. Co. v. New York*, 143 U. S. 314, 12 S. Ct. 403, 36 L. ed. 164; *Indiana v. Pullman Palace Car Co.*, 11 Biss. 561, 16 Fed. 193.

upon the right of foreign corporations to make contracts relating to such commerce.¹¹⁵

In the regulation of commerce of which persons are the subject, Congress may prescribe rules for passenger vessels.¹¹⁶ The power extends to the passage of laws to encourage immigration and to the admission of citizens and subjects of foreign nations,¹¹⁷ but not to the determination of their status when they arrive.¹¹⁸ Laws governing the right to land immigrants should be uniform, and the jurisdiction of Congress in the passage of such laws is exclusive.¹¹⁹ Immigration, or the importation of persons, may be absolutely prohibited by Congress.¹²⁰ Laws prohibiting the importation of contract laborers are of this class, and are valid.¹²¹ Contribution levied upon ship owners bringing in foreigners is designed to mitigate the evils incident upon foreign immigration, and is not a tax within the meaning of the constitution, but a regulation of commerce,¹²² which it is within the power of Congress to impose.¹²³

¹¹⁵ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 734, 5 S. Ct. 139, 28 L. ed. 1137; *Williams v. Hintermeister*, 26 Fed. 890; *Milan Milling etc. Co. v. Gorten*, 93 Tenn. 594, 27 S. W. 972, 26 L. R. A. 135; *Keating etc. Machine Co. v. The Favorite Carriage*, 12 Tex. Civ. App. 666, 35 S. W. 418.

¹¹⁶ *Gibbons v. Ogden*, 9 Wheat. 230, 6 L. ed. 23; *Passenger Cases*, 7 How. 282, 12 L. ed. 702; *People v. Raymond*, 34 Cal. 492; *Head Money Cases*, 112 U. S. 591, 5 S. Ct. 247, 28 L. ed. 798.

¹¹⁷ *Lin Sing v. Washburn*, 20 Cal. 534.

¹¹⁸ *Lemmon v. People*, 20 N. Y. 607.

¹¹⁹ *Henderson v. Mayor*, 92 U. S. 273, 23 L. ed. 543; *In re Florio*, 43 Fed. 115.

¹²⁰ *Gibbons v. Ogden*, 9 Wheat. 230, 6 L. ed. 23; *Passenger Cases*, 7 How. 282, 12 L. ed. 702; *The Wilson v. United States*, 1 Brock. 423, Fed. Cas. No. 17,846; *People v. Downer*, 7 Cal. 169; *The Chinese Exclusion Case*, 130 U. S. 603, 9 S. Ct. 623, 32 L. ed. 1068; *Fong Yue Ting v. United States*, 149 U. S. 705, 13 S. Ct. 1016, 37 L. ed. 905; *Ekiu v. United States*, 142 U. S. 659, 12 S. Ct. 338, 35 L. ed. 1146; *Moon Sing v. United States*, 158 U. S. 543, 39 L. ed. 1082; *Wong Wing v. United States*, 163 U. S. 237, 16 S. Ct. 977, 41 L. ed. 140.

¹²¹ *Lees v. United States*, 150 U. S. 480, 14 S. Ct. 163, 37 L. ed. 1150.

¹²² *Head Money Cases*, 112 U. S. 595, 5 S. Ct. 247, 28 L. ed. 798.

¹²³ *People v. Compagnie Generale*, 107 U. S. 59, 2 S. Ct. 87, 27 L. ed. 383, affirming 20 Blatchf. 296, 10 Fed. 357.

A corpse is not a person, nor is it property, and is therefore not a subject for regulation by Congress.¹²⁴

This clause authorizes the use of all means necessary to the proper exercise of the power conferred, as the power to build and maintain light-houses, piers, breakwaters, to employ revenue cutters, cause surveys of coasts, rivers and harbors, to appoint all necessary officers, at home and abroad, and prescribe their duties and fix terms of office and compensation and to define and punish crimes relative to commerce.¹²⁵ Crimes committed upon stranded vessels are punishable under act of Congress passed in the exercise of this power.¹²⁶ The power to lay an embargo is also included in the power to regulate commerce.¹²⁷

A policy of insurance is not an article of commerce; accordingly the act of issuing it cannot be a transaction of commerce,¹²⁸ and such business is exclusively within the power of the states to regulate.¹²⁹

Lottery tickets, however, have been declared to be articles of commerce, and their carriage from state to state interstate commerce, which Congress may forbid.¹³⁰

¹²⁴ *In re Wong Yung Quy*, 6 Saw. 442, 2 Fed. 624.

¹²⁵ *United States v. Coombs*, 12 Pet. 78, 9 L. ed. 1004; *United States v. Holliday*, 3 Wall. 407, 18 L. ed. 182; *United States v. Rhodes*, 1 Abb. U. S. 50, Fed. Cas. No. 16,151; *The Clinton Bridge*, Woolw. 164, Fed. Cas. No. 2900.

¹²⁶ *United States v. Coombs*, 12 Pet. 78, 9 L. ed. 1004; *United States v. Pitman*, 1 Sprague, 196, Fed. Cas. No. 16,051.

¹²⁷ *Gibbons v. Ogden*, 9 Wheat. 191, 6 L. ed. 23; *United States v. The William*, 2 Hall L. J. 272, Fed. Cas. No. 16,700.

¹²⁸ *Paul v. Virginia*, 8 Wall. 183, 19 L. ed. 357; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 573, 19 L. ed. 1029; *Philadelphia etc. Assn. v. New York*, 119 U. S. 118, 7 S. Ct. 108, 30 L. ed. 342; *Hooper v. California*, 155 U. S. 653, 15 S. Ct. 209, 39 L. ed. 297.

¹²⁹ *New York Life Ins. Co. v. Cravens*, 178 U. S. 401, 20 S. Ct. 962, 44 L. ed. 1116; *Farmers' etc. Ins. Co. v. Harrah*, 47 Ind. 240; *Insurance Co. v. Commonwealth*, 87 Pa. St. 183, 30 Am. Rep. 356; *List v. Commonwealth*, 118 Pa. St. 327, 12 Atl. 279.

¹³⁰ *Champion v. Ames*, 188 U. S. 321, 23 S. Ct. 321, 47 L. ed. 422; *Reilly v. United States*, 106 Fed. 896.

Commencement and Termination of Power.

Whenever a commodity has begun to move, as an article of trade, from one state to another, commerce in that commodity has begun;¹³¹ but this movement does not begin until the commodity has been shipped or started for transportation,¹³² and notwithstanding goods are all ready for shipment, if they have not actually commenced their final movement, they have not assumed a commercial character within this clause.¹³³ So logs, collected and lying in a river preliminary to shipment out of the state, are not yet subjects of commerce.¹³⁴ But the character of the commodity is not determined by the nature of the initial act; actual movement is the test.¹³⁵ Shipment to a forwarding agent is sufficient.¹³⁶ Nor does it make any difference that the initial shipment is over an independent line and for a very short distance.¹³⁷ A train of empty cars is not to be considered as engaged in interstate commerce until loaded with articles committed to the carrier.¹³⁸ While the right to avail one's self of the protection of the commerce clause by engaging in interstate or foreign traffic depends upon the will of the person making the shipment,¹³⁹ yet the mere intent to export an article cannot deter-

131 *The Daniel Ball*, 10 Wall. 565, 19 L. ed. 999; *Kidd v. Pearson*, 128 U. S. 25, 9 S. Ct. 6, 32 L. ed. 346; *Houston etc. Nav. Co. v. Insurance Co.*, 89 Tex. 1, 59 Am. St. Rep. 17, 32 S. W. 890, 30 L. R. A. 713.

132 *Kidd v. Pearson*, 128 U. S. 25, 9 S. Ct. 6, 32 L. ed. 346; *United States v. Boyer*, 85 Fed. 433; *Bennett v. American Exp. Co.*, 83 Me. 236, 23 Am. St. Rep. 774, 22 Atl. 159, 13 L. R. A. 33; *State v. Harrub*, 95 Ala. 188, 36 Am. St. Rep. 203, 10 South. 755, 15 L. R. A. 761.

133 *Coe v. Errol*, 116 U. S. 525, 6 S. Ct. 475, 29 L. ed. 715; *United States v. E. C. Knight Co.*, 156 U. S. 13, 15 S. Ct. 254, 39 L. ed. 325, affirming 60 Fed. 310.

134 *Coe v. Errol*, 116 U. S. 528, 6 S. Ct. 479, 29 L. ed. 715.

135 *The Daniel Ball*, 10 Wall. 565, 19 L. ed. 999.

136 *Cutting v. Florida etc. Co.*, 46 Fed. 644.

137 *Houston etc. Co. v. Insurance Co.*, 89 Tex. 6, 59 Am. St. Rep. 20, 32 S. W. 890, 30 L. R. A. 713.

138 *Norfolk etc. R. R. v. Commonwealth*, 93 Va. 749, 57 Am. St. Rep. 827, 24 S. E. 837, 34 L. R. A. 105.

139 *Vance v. W. A. Vandercook Co.* (No. 1), 170 U. S. 455, 18 S. Ct. 674, 42 L. ed. 1150.

mine when it becomes an article of interstate commerce,¹⁴⁰ and the fact that coal offered for sale generally in towboats is bought with the intention of exporting it does not exempt it from a state tax.¹⁴¹

A commodity ceases to be a subject of the commerce power when importation is complete;¹⁴² but importation is not complete so long as articles remain in the importer's hands in the original package.¹⁴³ When, however, the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the state, it has lost its distinctive character as an article of commerce.¹⁴⁴

Internal Commerce of the States.

The power committed to Congress by the constitution does not extend to commerce wholly within a state;¹⁴⁵ the purely internal commerce and navigation of a state are subjects exclusively for state regulation.¹⁴⁶ Such commerce is as far removed from federal control as interstate and foreign commerce is removed

¹⁴⁰ *United States v. E. C. Knight Co.*, 156 U. S. 13, 15 S. Ct. 249, 34 L. ed. 325; *Myers v. Commissioners*, 83 Md. 385, 55 Am. St. Rep. 349, 35 Atl. 144, 34 L. R. A. 309.

¹⁴¹ *Brown v. Houston*, 114 U. S. 629, 5 S. Ct. 1091, 29 L. ed. 257.

¹⁴² *People v. Huntington*, 4 N. Y. Leg. Obs. 187.

¹⁴³ *Brown v. Maryland*, 12 Wheat. 442, 6 L. ed. 678; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Cook v. Pennsylvania*, 97 U. S. 573, 24 L. ed. 1015; *Bowman v. Chicago etc. Ry.*, 125 U. S. 506, 8 S. Ct. 1065, 31 L. ed. 700; *Leisy v. Hardin*, 135 U. S. 108, 10 S. Ct. 683, 34 L. ed. 128.

¹⁴⁴ *Brown v. Maryland*, 12 Wheat. 441, 6 L. ed. 678; *Ex parte Brown*, 48 Fed. 436; *May v. New Orleans*, 178 U. S. 507, 44 L. ed. 1165.

¹⁴⁵ *Gibbons v. Ogden*, 9 Wheat. 194, 6 L. ed. 23; *The Daniel Ball*, 10 Wall. 564, 19 L. ed. 999; *Veazie v. Moor*, 14 How. 575, 14 L. ed. 545, affirming 32 Me. 364, 52 Am. Dec. 666; *Lord v. Steamship Co.*, 102 U. S. 543, 26 L. ed. 224; *Railroad Co. v. Harris*, 99 Tenn. 710, 43 S. W. 121.

¹⁴⁶ *Pennsylvania v. Wheeling etc. Bridge Co.*, 18 How. 432, 15 L. ed. 435; *Moore v. American Transp. Co.*, 24 How. 39, 16 L. ed. 674; *The Montello*, 11 Wall. 411, 20 L. ed. 191; *Peik v. Chicago etc. R. R.*, 94 U. S. 164, 24 L. ed. 97; *Pensacola T. Co. v. Western Union Tel. Co.*, 96 U. S. 1, 24 L. ed. 708; *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362; *Scott v. Wilson*, 3 N. H. 321; *Canal Commrs. v.*

from state control,¹⁴⁷ and Congress cannot interfere with it directly or indirectly.¹⁴⁸ To constitute interstate commerce, there must be traffic and intercourse between different states;¹⁴⁹ accordingly where both parties to a sale of goods reside in the same state, the transaction is not one of interstate commerce.¹⁵⁰ With respect to the navigable waters of the United States, however, it seems that the regulating power of Congress extends to vessels navigating them, even when engaged exclusively in domestic commerce,¹⁵¹ and although ports of destination and departure are within the same state.¹⁵²

Under these powers reserved by it a state may grant the exclusive privilege of navigating a non-navigable stream wholly within its borders, in consideration for rendering it navigable.¹⁵³ A state may legislate as to roads, ferries and canals, provided it does not thereby interfere with the free navigation of interstate highways,¹⁵⁴ and may issue charters to bridge, turn-

People, 5 Wend. 448; *People v. Rensselaer etc.* R. R., 15 Wend. 113, 30 Am. Dec. 33; *Cowden v. Pacific Coast S. S. Co.*, 94 Cal. 470, 28 Am. St. Rep. 142, 29 Pac. 873, 18 L. R. A. 221.

¹⁴⁷ *Sands v. Manistee River Imp. Co.*, 123 U. S. 295, 8 S. Ct. 113, 31 L. ed. 149; *Geer v. Connecticut*, 161 U. S. 531, 16 S. Ct. 600, 40 L. ed. 793.

¹⁴⁸ *Covington etc. Bridge Co. v. Kentucky*, 154 U. S. 210, 14 S. Ct. 1087, 38 L. ed. 970; *United States v. New Bedford Bridge*, 1 Wood & M. 417, Fed. Cas. No. 15,867; *The Gretna Green*, 20 Fed. 901; *The Tug Oconto*, 5 Biss. 463, Fed. Cas. No. 10,421.

¹⁴⁹ *State v. Harrub*, 95 Ala. 176, 36 Am. St. Rep. 195, 10 South. 755, 15 L. R. A. 761.

¹⁵⁰ *National Distilling Co. v. Cream City Imp. Co.*, 86 Wis. 352, 39 Am. St. Rep. 902, 56 N. W. 864.

¹⁵¹ *United States v. Burlington etc. Ferry Co.*, 21 Fed. 335.

¹⁵² *Cowden v. Pacific Coast S. S. Co.*, 94 Cal. 470, 28 Am. St. Rep. 142, 29 Pac. 873, 18 L. R. A. 221; but see *Whitaker v. The F. Lorents*, 29 Fed. Cas. 954; *The Tug Oconto*, 5 Biss. 463, Fed. Cas. No. 10,421.

¹⁵³ *Veazie v. Moor*, 14 How. 571, 14 L. ed. 545; *Commonwealth v. Philadelphia etc.* R. R., 62 Pa. St. 292, 1 Am. Rep. 403; *Mullen v. Log etc. Co.*, 90 Me. 567, 38 Atl. 560.

¹⁵⁴ *Corfield v. Coryell*, 4 Wash. C. C. 371, Fed. Cas. No. 3230; *United States v. New Bedford Bridge*, 1 Wood. & M. 417, Fed. Cas. No. 15,867.

pike and canal companies,¹⁵⁵ and grant exclusive rights.¹⁵⁶ It cannot, however, pass laws imposing tolls upon logs and lumber floating down a stream running into another state.¹⁵⁷ Nor can a compact between adjoining states, as to the use of a river partly in each, give the contracting states any greater rights in the river so far as the commerce power of Congress is concerned.¹⁵⁸

A state may prescribe regulations for warehouses,¹⁵⁹ notwithstanding such warehouses are used as instruments by those engaged in both interstate and domestic commerce.¹⁶⁰ Persons and things within the state's jurisdiction are subject to its regulation, although such regulation may have a bearing upon commerce,¹⁶¹ as the erection of wharves.¹⁶² Bridges and ferries are in the same category and are within the state's powers of regulation.¹⁶³ The grant of a ferry privilege within the limits of a city is not a regulation of commerce, although the ferry operates across a river and into another state,¹⁶⁴ but a state cannot grant rights which will seriously interfere with navigation.¹⁶⁵ In the

¹⁵⁵ *Fletcher v. Peck*, 6 Cranch, 87, 3 L. ed. 167; *Piscataqua Bridge v. New Haven Bridge*, 7 N. H. 35.

¹⁵⁶ *Gibbons v. Ogden*, 9 Wheat. 19, 6 L. ed. 23; *People v. Babcock*, 11 Wend. 586; *North River etc. Co. v. Livingston*, 3 Cow. 733.

¹⁵⁷ *Carson River Lumber Co. v. Patterson*, 33 Cal. 334.

¹⁵⁸ *Pennsylvania v. Wheeling Bridge Co.*, 18 How. 421, 15 L. ed. 435; *South Carolina v. Georgia*, 93 U. S. 4, 23 L. ed. 782.

¹⁵⁹ *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77; *Chicago etc. R. R. v. Iowa*, 94 U. S. 155, 24 L. ed. 94.

¹⁶⁰ *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77.

¹⁶¹ *Passenger Cases*, 7 How. 402, 12 L. ed. 702; *Sherlock v. Alling*, 93 U. S. 99, 23 L. ed. 819; *Hopkins v. United States*, 171 U. S. 594, 19 S. Ct. 40, 43 L. ed. 290; *People v. Wabash etc. Ry.*, 104 Ill. 476; *Wilson v. Kansas City etc. R. R.*, 60 Mo. 198.

¹⁶² *Stevens v. Walker*, 15 La. Ann. 577; *The Ann Ryan*, 7 Ben. 23, Fed. Cas. No. 428.

¹⁶³ *Gilman v. Philadelphia*, 3 Wall. 726, 18 L. ed. 96; *People v. Rensselaer etc. R. R.*, 15 Wend. 113, 30 Am. Dec. 33; *Gulf etc. Ry. v. Dwyer*, 75 Tex. 572, 12 S. W. 1001, 16 Am. St. Rep. 926; *Conway v. Taylor*, 1 Black, 603, 17 L. ed. 191; *Newport v. Taylor*, 16 B. Mon. 699.

¹⁶⁴ *Carroll v. Campbell*, 108 Mo. 550, 17 S. W. 884.

¹⁶⁵ *Conway v. Taylor*, 1 Black, 603, 17 L. ed. 191; *United States*

absence of congressional restrictions a state may authorize the bridging of an internal navigable river,¹⁶⁶ and a penalty for obstructing a navigable stream wholly within a state cannot be enforced in the federal courts.¹⁶⁷

The abridgment of a right, unless in conflict with the constitution or laws of the United States, is a matter between the government and the state,¹⁶⁸ and the United States courts are not bound to enjoin a bridge which, while it impedes navigation, assists commerce generally.¹⁶⁹ It is within the power of the states to enact any legislation which is a mere aid to commerce.¹⁷⁰

Not everything which affects commerce amounts to a regulation of it;¹⁷¹ valid legislation may indirectly and remotely affect interstate commerce.¹⁷² So a state may require railroads to fix and post up freight rates,¹⁷³ and may fix a maximum rate for transportation,¹⁷⁴ but only so long as both points to which

v. *New Bedford Bridge*, 1 Wood. & M. 401, Fed. Cas. No. 15,867; *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518, 14 L. ed. 249.

¹⁶⁶ *Willson v. Blackbird Creek etc. Co.*, 2 Pet. 252, 7 L. ed. 412; *The Passaic Bridges*, 3 Wall. 793, 16 L. ed. 799; *Escandaba etc. Co. v. Chicago*, 107 U. S. 683, 2 S. Ct. 189, 27 L. ed. 442; *Cardwell v. American Bridge Co.*, 113 U. S. 208, 5 S. Ct. 424, 28 L. ed. 959; *Willamette Bridge Co. v. Hatch*, 125 U. S. 31, 8 S. Ct. 815, 31 L. ed. 629.

¹⁶⁷ *United States v. New Bedford Bridge*, 1 Wood. & M. 417, Fed. Cas. No. 15,867.

¹⁶⁸ *Willson v. Blackbird Creek etc. Co.*, 2 Pet. 245, 7 L. ed. 412; *Woodman v. Kilbourne Mfg. Co.*, 1 Abb. U. S. 163, Fed. Cas. No. 17,978.

¹⁶⁹ *Gilman v. Philadelphia*, 3 Wall. 727, 18 L. ed. 96.

¹⁷⁰ *Western Union Tel. Co. v. James*, 162 U. S. 656, 16 S. Ct. 934, 40 L. ed. 1105.

¹⁷¹ *Delaware R. R. Tax*, 18 Wall. 232, 21 L. ed. 888; *Case of State Freight Tax*, 15 Wall. 284, 21 L. ed. 146; *South Carolina v. Charleston*, 4 Rich. 289.

¹⁷² *Passenger Cases*, 7 How. 402, 12 L. ed. 702; *Crutcher v. Kentucky*, 141 U. S. 61, 11 S. Ct. 851, 35 L. ed. 649.

¹⁷³ *Railroad Co. v. Fuller*, 17 Wall. 567, 21 L. ed. 710; *Case of State Freight Tax*, 15 Wall. 284, 21 L. ed. 146; *Munn v. Illinois*, 94 U. S. 135, 24 L. ed. 77.

¹⁷⁴ *Chicago etc. R. R. v. Iowa*, 94 U. S. 163, 24 L. ed. 94; *Peik v. North Western R. R.*, 94 U. S. 177, 24 L. ed. 97; *Ruggles v. Illinois*, 108 U. S. 531, 2 S. Ct. 836, 27 L. ed. 812; *Dow v. Biedelman*,

regulations apply are within the state.¹⁷⁵ Congress alone has power to prohibit discrimination and unjust charges by interstate carriers;¹⁷⁶ accordingly, a state law imposing a penalty for charging more than the rate named in a bill of lading cannot apply to interstate shipment,¹⁷⁷ and a state law or constitutional provision is an unlawful interference with interstate commerce so far as provisions as to short and long haul rates extend to a long haul from a point outside to one within the state, and a short haul on the same line and in the same direction between points within the state.¹⁷⁸ An ordinance granting a street railway franchise to an interstate carrier, which, in fixing the rate of fare, discriminates in favor of a domestic carrier, violates the commerce clause.¹⁷⁹ A state law may give a valid lien upon boats and vessels navigating interior waters,¹⁸⁰ and may give a right of action in personam against the owners of vessels injuring property on shore.¹⁸¹ A law giving a lien for materials and supplies furnished a vessel in her home port is not a regulation of commerce.¹⁸²

¹⁷⁵ U. S. 688, 8 S. Ct. 1029, 31 L. ed. 841; *Tilley v. Railroad Commrs.*, 4 Woods, 438, 5 Fed. 650; *Galena etc. R. R. v. Loomis*, 13 Ill. 548, 56 Am. Dec. 471; *Chicago etc. R. R. v. Jones*, 149 Ill. 380, 41 Am. St. Rep. 287, 37 N. E. 252, 24 L. R. A. 141.

¹⁷⁶ *Wabash etc. Ry. v. Illinois*, 118 U. S. 564, 7 S. Ct. 6, 30 L. ed. 244; *Covington etc. Bridge Co. v. Kentucky*, 154 U. S. 214, 14 S. Ct. 1090, 43 L. ed. 679; *Philadelphia etc. Co. v. Pennsylvania*, 123 U. S. 338, 7 S. Ct. 1118, 30 L. ed. 1200; *Gulf etc. Ry. v. Dwyer*, 75 Tex. 572, 16 Am. St. Rep. 926, 12 S. W. 1001.

¹⁷⁷ *Interstate Commerce Com. v. Brimson*, 154 U. S. 472, 14 S. Ct. 1125, 38 L. ed. 1047; *Carton v. Illinois Cent. R. R.*, 59 Iowa, 148, 44 Am. Rep. 672.

¹⁷⁸ *Gulf etc. Ry. v. Hefley*, 158 U. S. 102, 15 S. Ct. 802, 39 L. ed. 910.

¹⁷⁹ *Louisville etc. R. R. v. Eubank*, 184 U. S. 33, 22 S. Ct. 277, 46 L. ed. 416; *Freight Cases*, 95 N. C. 428, 59 Am. Rep. 247; but see *Louisville etc. R. R. v. Kentucky*, 183 U. S. 518, 22 S. Ct. 95, 46 L. ed. 298.

¹⁸⁰ *State v. Omaha etc. Co.*, 113 Iowa, 30, 86 Am. St. Rep. 357, 84 N. W. 983, 52 L. R. A. 315.

¹⁸¹ *King v. Greenway*, 71 N. Y. 413.

¹⁸² *Johnson v. Chicago etc. Co.*, 119 U. S. 388, 7 S. Ct. 254, 30 L. ed. 447.

¹⁸³ *Hursey v. Hassam*, 45 Miss. 133.

Regulation of Passenger Traffic.

A state cannot impose upon shipmasters burdensome conditions as to the landing of passengers,¹⁸³ nor can it regulate the admission of subjects of foreign nations within its borders;¹⁸⁴ such power resides only in the federal government,¹⁸⁵ and the right of a state to legislate to protect itself against paupers and criminals from abroad can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity.¹⁸⁶ A state law imposing a tax upon passengers coming from a foreign port is unconstitutional and void,¹⁸⁷ and a state law designed to discourage Chinese immigration is likewise void.¹⁸⁸ A state cannot authorize the seizure and imprisonment of free negroes brought into its territory from abroad.¹⁸⁹

A tax upon passengers or goods passing through a state is void as in conflict with the commerce power.¹⁹⁰ A tax upon outgoing passengers, while not a regulation of commerce within this clause, is, nevertheless, void, as abridging the right of every citizen to pass through every part of the United States.¹⁹¹ So also a license tax imposed upon a resident agent soliciting

¹⁸³ *Henderson v. Mayor*, 92 U. S. 269, 23 L. ed. 543; *People v. Compagnie Generale etc.*, 107 U. S. 60, 2 S. Ct. 88, 27 L. ed. 383, affirming 20 Blatchf. 300, 10 Fed. 360.

¹⁸⁴ *Chy Lung v. Freeman*, 92 U. S. 281, 23 L. ed. 73.

¹⁸⁵ *In re Ah Fong*, 3 Saw. 145, Fed. Cas. No. 102; *Passenger Cases*, 7 How. 349, 12 L. ed. 702.

¹⁸⁶ *Chy Lung v. Freeman*, 92 U. S. 280, 23 L. ed. 550.

¹⁸⁷ *Passenger Cases*, 7 How. 349, 12 L. ed. 702; *People v. Downer*, 7 Cal. 171; *People v. Raymond*, 84 Cal. 498; *State v. S. S. Constitution*, 42 Cal. 588, 10 Am. Rep. 310.

¹⁸⁸ *Lin Sing v. Washburn*, 20 Cal. 534.

¹⁸⁹ *Elkinson v. Dehesseline*, 2 Whart. C. C. 56, Fed. Cas. No. 4366; *Anonymous*, 1 Opin. Atty. Gen. 629; but see *Anonymous*, 2 Id. 426.

¹⁹⁰ *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *Crandall v. Nevada*, 6 Wall. 35, 18 L. ed. 745; *Fargo v. Michigan*, 121 U. S. 238, 7 S. Ct. 860, 30 L. ed. 888; *Diamond Match Co. v. Ontanagon*, 188 U. S. 82, 23 S. Ct. 266, 47 L. ed. 394. But, see *Smith v. Marston*, 5 Tex. 432; *Indiana v. American Exp. Co.*, 7 Biss. 227, Fed. Cas. No. 7021; *State Tax on Railroads' Gross Receipts*, 15 Wall. 284, 21 L. ed. 164; *Railroad Co. v. Maryland*, 21 Wall. 456, 22 L. ed. 678.

¹⁹¹ *Crandall v. Nevada*, 6 Wall. 49, 18 L. ed. 745; *Treasurer v. Philadelphia etc. R. R.*, 4 Houst. 189.

passenger travel over roads beyond the state is a tax upon interstate commerce;¹⁹² but the business of an emigrant broker—i. e., a person hiring laborers to be employed in another state—is upon a different footing, and a tax thereon is not in interference with commerce.¹⁹³

A state law requiring that all passengers irrespective of color, on interstate carriers, have equal privileges is a direct burden upon interstate commerce;¹⁹⁴ but a statute requiring railroads to furnish separate coaches for negroes on trains within the state is not a regulation of interstate commerce, and is valid.¹⁹⁵

Police Powers of States.

The grant to Congress of power to regulate foreign and interstate commerce was not a surrender of the police power;¹⁹⁶ nor was it intended to interfere with the proper exercise of the police power by the states,¹⁹⁷ although such legislation must necessarily affect commerce indirectly.¹⁹⁸ The states' powers to enact inspection, quarantine and health laws are in nowise affected by

¹⁹² *McCall v. California*, 136 U. S. 109, 10 S. Ct. 881, 34 L. ed. 391.

¹⁹³ *Williams v. Fears*, 179 U. S. 278, 21 S. Ct. 128, 45 L. ed. 186; *State v. Hunt*, 129 N. C. 686, 85 Am. St. Rep. 758, 40 S. E. 216. But see *Joseph v. Randolph*, 71 Ala. 505, 46 Am. Rep. 349.

¹⁹⁴ *Hall v. De Cuir*, 95 U. S. 488, 24 L. ed. 547.

¹⁹⁵ *Louisville etc. Ry. v. Mississippi*, 133 U. S. 590, 10 S. Ct. 348, 33 L. ed. 784, affirming 66 Miss. 662, 14 Am. St. Rep. 599, 6 South. 203, 5 L. R. A. 132; *Brinkley v. Louisville etc. Ry.*, 95 Fed. 355; *Smith v. State*, 100 Tenn. 503, 46 S. W. 569, 41 L. R. A. 432.

¹⁹⁶ *Railroad v. Husen*, 95 U. S. 470, 24 L. ed. 527; *New York etc. R. R. v. New York*, 165 U. S. 631, 17 S. Ct. 418, 41 L. ed. 853; *Cleveland etc. Ry. v. Illinois*, 177 U. S. 516, 20 S. Ct. 722, 44 L. ed. 868.

¹⁹⁷ *Southern S. S. Co. v. Port Wardens*, 6 Wall. 33, 18 L. ed. 749; *Wiggins' Ferry Co. v. East St. Louis*, 107 U. S. 365, 2 S. Ct. 257, 27 L. ed. 419; *Morgan's etc. Co. v. Board of Health*, 36 La. Ann. 669.

¹⁹⁸ *Sherlock v. Alling*, 93 U. S. 103, 23 L. ed. 819; *Plumley v. Massachusetts*, 155 U. S. 473, 15 S. Ct. 158, 39 L. ed. 223; *Louisville etc. Ry. v. Kentucky*, 161 U. S. 701, 16 S. Ct. 724, 40 L. ed. 849; *Hennington v. Georgia*, 163 U. S. 315, 16 S. Ct. 1092, 41 L. ed. 166; *Breechbill v. Randall*, 102 Ind. 529, 52 Am. Rep. 696, 1 N. E. 363; *Burdick v. People*, 149 Ill. 600, 41 Am. St. Rep. 329, 36 N. E. 948, 24 L. R. A. 152.

this clause.¹⁹⁹ All private interests must be subservient to the general interest of the community,²⁰⁰ and the power of the states to enact purely police regulations is supreme.²⁰¹

The police power extends to the protection of the lives, limbs, health, comfort, morals, and quiet of all persons, and the protection of all property in the state;²⁰² it is the right of the state to prescribe regulations for the good order, peace, protection, comfort, and convenience of the community.²⁰³ No general rule can be laid down to mark the limitations of this power; each particular case must be judged by itself in order to determine whether the statute involved is a legitimate exercise of the police power, and not an invalid restriction upon commerce.²⁰⁴ A state law intended as a regulation of police and calculated to produce the end sought cannot be regarded as a regulation of commerce;²⁰⁵ but a state cannot under the guise of a police regulation, counteract the commerce power of Congress.²⁰⁶

— Subjects of Police Regulation.

Under the police power a state may regulate the position of

¹⁹⁹ *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23; *New York v. Miln*, 11 Pet. 102, 9 L. ed. 648; *Conway v. Taylor*, 1 Black, 633, 17 L. ed. 191.

²⁰⁰ *Slaughter-house Cases*, 16 Wall. 62, 21 L. ed. 394; *Commonwealth v. Alger*, 7 Cush. 84; *Taunton v. Taylor*, 116 Mass. 254; *Watertown v. Mayo*, 109 Mass. 315, 12 Am. Rep. 694.

²⁰¹ *Slaughter-house Cases*, 16 Wall. 62, 21 L. ed. 394; *Bartemeyer v. Iowa*, 18 Wall. 138, 21 L. ed. 929.

²⁰² *Munn v. Illinois*, 94 U. S. 147, 24 L. ed. 77; *Toledo etc. Co. v. Jacksonville*, 67 Ill. 37, 16 Am. Rep. 611; *Ex parte Schrader*, 33 Cal. 279; *Davis v. Central R. R. Co.*, 17 Ga. 323.

²⁰³ *New Orleans Gas Co. v. Hart*, 40 La. Ann. 474, 8 Am. St. Rep. 547, 4 South. 215.

²⁰⁴ *Pittsburgh etc. Coal Co. v. Louisiana*, 156 U. S. 598, 15 S. Ct. 459, 39 L. ed. 544; *Commonwealth v. Alger*, 7 Cush. 84; *New Orleans Gas Co. v. Hart*, 40 La. Ann. 474, 8 Am. St. Rep. 547, 4 South. 215.

²⁰⁵ *Smith v. Maryland*, 18 How. 71, 15 L. ed. 269; *New York v. Miln*, 11 Pet. 139, 9 L. ed. 648; *Hawthorn v. People*, 109 Ill. 302, 50 Am. Rep. 610.

²⁰⁶ *License Cases*, 5 How. 592, 12 L. ed. 256; *Railroad Co. v. Husen*, 95 U. S. 473, 24 L. ed. 527; *Robbins v. Shelby County Taxing Dist.*, 120 U. S. 493, 7 S. Ct. 594, 30 L. ed. 694.

vessels in her harbors and rivers,²⁰⁷ and require the lighting of vessels at night,²⁰⁸ and regulate the speed of steamers on navigable rivers,²⁰⁹ and the rafting of lumber.^{209a} The introduction of slaves,²¹⁰ or of paupers, criminals, diseased or infirm persons, may be prohibited by the states;²¹¹ but while a state statute requiring the master of a vessel to make a report of immigrants is not a regulation of commerce,²¹² a state cannot require steamship companies to give a bond guaranteeing that immigrants will not become charges upon the state;²¹³ nor can a state require carriers to remove paupers which they have brought within its borders.²¹⁴

The exclusion of passengers who are in possession of their faculties, and neither paupers nor criminals, is a regulation of commerce which the states cannot exercise.²¹⁵ A statute making it a crime to persuade seamen to leave their vessels is a valid exercise of the police power, and not a restraint upon commerce.²¹⁶

Railroads engaged in interstate commerce are subject to police regulations intended and operating to expedite safe trans-

²⁰⁷ *The Baltic*, 2 Ben. 399; *The Helen*, 5 Hughes, 122, 1 Fed. 922; *Vanderbilt v. Adams*, 7 Cow. 348.

²⁰⁸ *The James Gray v. The John Fraser*, 21 How. 187, 16 L. ed. 106.

²⁰⁹ *People v. Jenkins*, 1 Hill, 469; *People v. Roe*, 1 Id. 470; *Toledo etc. Co. v. Deacon*, 63 Ill. 91.

^{209a} *Harrigan v. Connecticut L. Co.*, 129 Mass. 580, 37 Am. Rep. 387.

²¹⁰ *Groves v. Slaughter*, 15 Pet. 449, 11 L. ed. 800; *Osborn v. Nicholson*, 1 Dill. 235, Fed. Cas. No. 10,595.

²¹¹ *Passenger Cases*, 7 How. 463, 12 L. ed. 702; *Moore v. Illinois*, 14 How. 13, 14 L. ed. 306; *State v. S. S. Constitution*, 42 Cal. 578, 10 Am. Rep. 303; *Lemmon v. People*, 20 N. Y. 607.

²¹² *New York v. Miln*, 11 Pet. 132, 9 L. ed. 648; *Immigration Commrs. v. Brandt*, 26 La. Ann. 81.

²¹³ *Chy Lung v. Freeman*, 92 U. S. 281, 23 L. ed. 550. See, also, *Henderson v. Mayor*, 92 U. S. 275, 23 L. ed. 543, and *Passenger Cases*, 7 How. 463, 12 L. ed. 702.

²¹⁴ *Bangor v. Smith*, 83 Me. 425, 22 Atl. 380, 13 L. R. A. 686.

²¹⁵ *State v. S. S. Constitution*, 42 Cal. 578, 10 Am. Rep. 303.

²¹⁶ *Ex parte Young*, 36 Or. 247, 59 Pac. 707, 78 Am. St. Rep. 772, 48 L. R. A. 153.

portation;²¹⁷ e. g., a law imposing a penalty for failure to ship freight promptly,²¹⁸ or for refusing to deliver freight upon tender of the charges specified in the bill of lading;²¹⁹ laws requiring tracks to be fenced;^{219a} regulating the placing of switches, the weight of rails, the safety of beams, and the number of employees.²²⁰ Statutes regulating the speed of trains are valid police regulations;²²¹ as also are statutes regulating the stoppage of trains;²²² but if adequate local service is provided, such a statute, so far as it applies to through interstate trains, is a burden upon commerce and void.²²³ So, also, where the effect of the statute is to require a fast, through mail train to run off the main line, a burden is imposed upon interstate commerce.²²⁴

A statute prescribing the qualifications of locomotive engineers and requiring them to submit to examination, is valid as a police regulation, although it incidentally affects interstate commerce.²²⁵ Reasonable regulations for the preservation of prop-

217 *Chicago etc. R. R. v. Iowa*, 94 U. S. 155, 24 L. ed. 94; *Lake Shore etc. Ry. v. Ohio*, 173 U. S. 308, 19 S. Ct. 465, 43 L. ed. 702; *Davidson v. State*, 4 Tex. App. 545, 3 Am. Rep. 166; *Gulf etc. Ry. Co. v. Dwyer*, 75 Tex. 572, 16 Am. St. Rep. 926, 12 S. W. 1001.

218 *Bagg v. Wilmington etc. R. R.*, 109 N. C. 279, 26 Am. St. Rep. 560, 14 S. E. 79, 14 L. R. A. 596.

219 *Little Rock etc. Ry. v. Hanniford*, 49 Ark. 291, 5 S. W. 294; *Gulf etc. Ry. Co. v. Nelson*, 4 Tex. Civ. App. 345, 23 S. W. 732.

219a *Thorpe v. Rutland etc. R. R.*, 27 Vt. 130, 62 Am. Dec. 625.

220 *Thorpe v. Rutland etc. R. R.*, 27 Vt. 130, 62 Am. Dec. 625; *Hegeman v. Western R. R.*, 16 Barb. 353; *Chicago etc. Ry. v. Reidy*, 66 Ill. 43; *Jacobson v. Wisconsin etc. R. R.*, 71 Minn. 519, 70 Am. St. Rep. 358, 40 L. R. A. 389.

221 *Erb v. Morasch*, 177 U. S. 585, 20 S. Ct. 819, 44 L. ed. 897; *Clark v. Boston etc. R. R.*, 64 N. H. 323, 10 Atl. 676; *Chicago etc. Ry. Co. v. People*, 105 Ill. 657; *Bluedorn v. Missouri Pac. Ry.*, 103 Mo. 239, 32 Am. St. Rep. 615, 18 S. W. 1103.

222 *Lake Shore etc. Ry. v. Ohio*, 173 U. S. 301, 19 S. Ct. 465, 43 L. ed. 702; *Chicago etc. Ry. v. People*, 105 Ill. 657; *Illinois Cent. Ry. v. People*, 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119; *Davidson v. State*, 4 Tex. App. 545, 30 Am. Rep. 166.

223 *Cleveland etc. Ry. v. Illinois*, 177 U. S. 521, 20 S. Ct. 722, 44 L. ed. 868.

224 *Illinois Cent. Ry. v. Illinois*, 163 U. S. 153, 16 S. Ct. 1096, 41 L. ed. 107.

225 *Smith v. Alabama*, 124 U. S. 480, 8 S. Ct. 564, 31 L. ed. 508;

erty which is unclaimed at its destination, are also within the police power of the states.²²⁶ While rules established by Congress control the liability of interstate carriers for the loss of goods in their custody as such,²²⁷ yet statutes affecting the right of common carriers to limit their common-law liability are not void as restrictions on commerce; they are upheld as being salutary in their operation, in that they compel carriers to use the utmost care and diligence.²²⁸ Acts restricting the right of carriers to limit the time within which suit shall be brought against them are also upheld.²²⁹ A statute permitting the garnishment of common carriers is not a regulation of commerce.²³⁰ An act prohibiting consolidation by parallel competing railroads is not an interference with the commerce power of Congress.²³¹ Sunday laws, subjecting railroads to penalties for running freight trains on Sunday, are regulations of police, and not invalid as to interstate trains.²³² Imposition by broker-

Nashville etc. R. R. v. Alabama, 128 U. S. 96, 9 S. Ct. 28, 32 L. ed. 352; *McDonald v. State*, 81 Ala. 279, 60 Am. Rep. 158, 2 South. 829; *Louisville etc. Ry. v. Baldwin*, 85 Ala. 623, 5 South. 314.

²²⁶ *State v. Chicago etc. Ry.*, 68 Minn. 381, 64 Am. St. Rep. 482, 71 N. W. 400, 38 L. R. A. 672.

²²⁷ *Houston etc. Nav. Co. v. Insurance Co.*, 89 Tex. 1, 59 Am. St. Rep. 17, 32 S. W. 889, 30 L. R. A. 713.

²²⁸ *Chicago etc. Ry. v. Solon*, 169 U. S. 133, 18 S. Ct. 289, 43 L. ed. 688, affirming 95 Iowa, 260, 58 Am. St. Rep. 430, 63 N. W. 692, 28 L. R. A. 718; *Western Union Tel. Co. v. Eubanks*, 100 Ky. 591, 66 Am. St. Rep. 361, 38 South. 1068, 36 L. R. A. 711; *McCann v. Eddy*, 133 Mo. 59, 33 S. W. 71, 35 L. R. A. 110.

²²⁹ *Gulf etc. Ry. v. Eddius*, 7 Tex. Civ. App. 116, 26 S. W. 429; *Reeves v. Texas etc. Ry.*, 11 Tex. Civ. App. 514, 32 S. W. 920.

²³⁰ *Landa v. Holck*, 129 Mo. 663, 50 Am. St. Rep. 459, 31 S. W. 900.

²³¹ *Louisville etc. Ry. v. Kentucky*, 161 U. S. 677, 16 S. Ct. 714, 40 L. ed. 849, affirming 97 Ky. 675, 31 S. W. 476; and see *Gulf etc. Ry. Co. v. State*, 72 Tex. 404, 13 Am. St. Rep. 815, 10 S. W. 81, 1 L. R. A. 849.

²³² *Hennington v. Georgia*, 163 U. S. 317, 13 S. Ct. 1086, affirming 90 Ga. 396, 17 S. E. 1009, 41 L. ed. 166; *State v. Southern Ry.*, 119 N. C. 814, 56 Am. St. Rep. 689, 25 S. E. 862; *State v. Baltimore etc. R. R.*, 24 W. Va. 783, 49 Am. Rep. 290. Contra, *Dinsmore v. Police Board*, 12 Abb. N. C. 436; *Norfolk etc. Ry. v. Commonwealth*, 88 Va. 95, 29 Am. St. Rep. 705, 13 S. E. 340, 13 L. R. A. 107.

age in railroad tickets may be prevented by an act requiring ticket sellers to have certificates of authority.²³³

Telegraph companies are also amenable to the police power, and may be subjected to penalties for acts of negligence.²³⁴ So a statute requiring the prompt delivery of messages, without partiality, under a penalty, is valid;²³⁵ likewise, as to a statute requiring prompt transmission of messages, although addressed to points outside the state.²³⁶ But a law attempting to prescribe the mode in which messages shall be delivered at points outside the state is void as a regulation of commerce.²³⁷ A state cannot exclude from its limits an interstate telegraph company chartered by Congress;²³⁸ but a state constitutional provision that no foreign corporation shall do business within the state without maintaining a known place of business, and an authorized agent therein, applies to foreign telegraph companies.²³⁹ The purchasing and selling of pools on races to be held in other states may be prohibited by statute, and such statute is not void as a regulation of commerce so far as it operates to prevent the transmission of money by interstate telegraph to be bet upon horseraces.²⁴⁰ Statutes restricting contracts limiting the time for suing telegraph companies are not regulations of com-

²³³ *Burdick v. People*, 149 Ill. 600, 41 Am. St. Rep. 329, 36 N. E. 948, 24 L. R. A. 152; *Fry v. State*, 63 Ind. 552, 30 Am. Rep. 238; *State v. Corbett*, 57 Minn. 345, 59 N. W. 317, 24 L. R. A. 498.

²³⁴ *Western Union Tel. Co. v. Howell*, 95 Ga. 194, 51 Am. St. Rep. 68, 22 S. E. 286, 30 L. R. A. 158.

²³⁵ *Western Union Tel. Co. v. James*, 162 U. S. 650, 16 S. Ct. 94, 40 L. ed. 1105, affirming 90 Ga. 254, 16 S. E. 83; *Western Union Tel. Co. v. Tyler*, 90 Va. 297, 44 Am. St. Rep. 910, 18 S. E. 280.

²³⁶ *Western Union Tel. Co. v. Ferris*, 103 Ind. 91, 2 N. E. 240.

²³⁷ *Western Union Tel. Co. v. Pendleton*, 122 U. S. 358, 7 S. Ct. 1126, 30 L. ed. 1187.

²³⁸ *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 9, 24 L. ed. 708; *American Union Tel. Co. v. Western Union Tel. Co.*, 67 Ala. 26, 42 Am. Rep. 90.

²³⁹ *American Union Tel. Co. v. Western Union Tel. Co.*, 67 Ala. 26, 42 Am. Rep. 90.

²⁴⁰ *Lacey v. Palmer*, 93 Va. 159, 57 Am. St. Rep. 795, 24 S. E. 930, 31 L. R. A. 822; *State v. Harbourn*, 70 Conn. 484, 66 Am. St. Rep. 126, 40 Atl. 179, 40 L. R. A. 607.

merce.²⁴¹ The rules applicable to telegraph companies apply alike to telephone companies.²⁴²

Inspection laws are not burdens upon commerce; so long as they are reasonable they are proper police regulations.²⁴³ The power to pass such laws was not surrendered by the states.²⁴⁴ The object of inspection laws is to improve the quality of articles produced, and fit them for subjects of commerce;²⁴⁵ accordingly, a state cannot forbid trade in a well-known article of commerce, irrespective of its condition or quality.²⁴⁶ A state inspection law discriminating in favor of domestic products as against those of other states is void as a burden on commerce,²⁴⁷ and this though it be valid on its face, if its necessary operation is to exclude products of other states.²⁴⁸ It is immaterial that an act having such effect purports to apply to all states alike, including the enacting state.²⁴⁹ An act requiring the inspection of imported articles only, and not applying to domestic products, is clearly a burden upon commerce, and void.²⁵⁰ Acts requir-

²⁴¹ *Burgess v. Western Union Tel. Co.*, 92 Tex. 125, 71 Am. St. Rep. 833, 46 S. W. 794.

²⁴² *Delaware etc. Co. v. Delaware*, 50 Fed. 677; *Central Union Tel. Co. v. State*, 118 Ind. 194, 10 Am. St. Rep. 114, 19 N. E. 604.

²⁴³ *Turner v. Maryland*, 107 U. S. 38, 2 S. Ct. 44, 27 L. ed. 370, affirming 55 Md. 240; *Patapsco Guano Co. v. Board of Agriculture*, 53 Fed. 604; *State v. Coal Co.*, 41 La. Ann. 472, 6 South. 224.

²⁴⁴ *King v. American Transp. Co.*, 1 Flipp. 1, Fed. Cas. No. 7787.

²⁴⁵ *Gibbons v. Ogden*, 9 Wheat. 203, 6 L. ed. 23.

²⁴⁶ *Bowman v. Chicago etc. Ry.*, 125 U. S. 488, 8 S. Ct. 689, 31 L. ed. 700; *McGregor v. Cone*, 104 Iowa, 469, 65 Am. St. Rep. 1025, 73 N. W. 1043, 39 L. R. A. 484; *Scott v. Donald*, 165 U. S. 99, 17 S. Ct. 265, 41 L. ed. 632.

²⁴⁷ *Schollenberger v. Pennsylvania*, 171 U. S. 12, 18 S. Ct. 757, 43 L. ed. 57; *State v. Duckworth*, 5 Idaho, 642, 51 Pac. 456, 95 Am. St. Rep. 199, 39 L. R. A. 365.

²⁴⁸ *Minnesota v. Barber*, 136 U. S. 326, 10 S. Ct. 862, 34 L. ed. 455, affirming 39 Fed. 641; *Brimmer v. Rebman*, 138 U. S. 82, 11 S. Ct. 213, 34 L. ed. 862; *Swift v. Sutphin*, 39 Fed. 630; *State v. Klein*, 126 Ind. 68, 25 N. E. 873.

²⁴⁹ *Brimmer v. Rebman*, 138 U. S. 82, 11 S. Ct. 213, 34 L. ed. 862.

²⁵⁰ *Voight v. Wright*, 141 U. S. 66, 11 S. Ct. 855, 35 L. ed. 638; *Vance v. W. A. Vandercreek Co.*, 170 U. S. 456, 18 S. Ct. 674; *Georgia*

ing the gauging of cargoes before sale are not in conflict with the commercial clause.²⁵¹ Where an act requires the inspection of articles offered for sale, irrespective of their source, no constitutional provision is violated.²⁵² A state may forbid the sale of dangerous articles, such as petroleum, below a certain standard,²⁵³ and may regulate the use of explosives and dangerous oils and substances,²⁵⁴ and provide for their removal.²⁵⁵ A statute requiring vessels to furnish statements as to the names of owners, is void as to vessels registered under federal laws,²⁵⁶ and a statute requiring the survey of sea-going vessels cannot be sustained as an inspection law.²⁵⁷

Quarantine and other sanitary regulations, incidentally affecting commerce, belong to that class which the states may establish until Congress acts in the matter by covering the same ground or forbidding state laws.²⁵⁸ A state quarantine law will not be declared void because it may, to some extent, be a regulation of foreign or interstate commerce.²⁵⁹ It is within the police power

Packing Co. v. Mayor, 60 Fed. 779; *Vines v. State*, 67 Ala. 73; *Powell v. State*, 69 Ala. 10.

²⁵¹ *Pittsburgh etc. Co. v. Louisiana*, 156 U. S. 590, 15 S. Ct. 459, 86 L. ed. 544; *Charleston v. Rogers*, 2 McCord, 295, 13 Am. Dec. 751.

²⁵² *State v. Fosdick*, 21 La. Ann. 256; *Gaines v. Coates*, 51 Miss. 835.

²⁵³ *Patterson v. Kentucky*, 1 Bush, 311, 21 Am. Rep. 220; *Clark v. Board of Health*, 11 Chic. L. N. 194.

²⁵⁴ *Slaughter-house Cases*, 16 Wall. 62, 21 L. ed. 394; *United States v. De Witt*, 9 Wall. 44, 19 L. ed. 593; *Patterson v. Kentucky*, 97 U. S. 504, 24 L. ed. 1115.

²⁵⁵ *Holmes v. Jennison*, 14 Pet. 540, 10 L. ed. 579; *Chillicothe v. Brown*, 38 Mo. App. 616.

²⁵⁶ *Sinnot v. Davenport*, 22 How. 227, 16 L. ed. 243; *Foster v. Davenport*, 22 How. 244, 16 L. ed. 248. *Contra*, *Commissioners v. The Cuba*, 28 Ala. 185.

²⁵⁷ *Foster v. Port of New Orleans*, 94 U. S. 246, 24 L. ed. 122.

²⁵⁸ *Morgan's etc. S. S. Co. v. Board of Health*, 118 U. S. 465, 6 S. Ct. 1114, 30 L. ed. 237; *King v. American Transp. Co.*, 1 Flipp. 1, Fed. Cas. No. 7787; *Train v. Boston Disinfecting Co.*, 144 Mass. 531, 59 Am. Rep. 116, 11 N. E. 936.

²⁵⁹ *Gilman v. Philadelphia*, 3 Wall. 713, 18 L. ed. 96; *Minneapolis etc. Ry. v. Milner*, 57 Fed. 256.

of a state to authorize boards of health to establish a quarantine system to prevent immigrants, and other persons likely to spread disease, from entering the state;²⁶⁰ but whether a law requiring the stoppage of vessels would be upheld as a valid exercise of the police power, if there were federal quarantine regulations is questionable.²⁶¹ Congress, however, by act of 1799, adopted state quarantine laws and regulations and directed federal officers and agents to aid in their enforcement.²⁶² A regulation of a board of health requiring that all rags arriving from foreign ports shall be disinfected before being discharged is reasonable and valid;²⁶³ but the police power does not extend to the enactment of an ordinance forbidding the importation or dealing in second-hand clothing which has been imported regardless of the fact whether it is infected or not.²⁶⁴ The importation of anything, which, by reason of its condition, would cause disease, may be forbidden²⁶⁵—e. g., diseased and infected livestock²⁶⁶—but a state cannot prohibit importation of cattle during certain seasons of the year regardless of the question of

²⁶⁰ *Compagnie Francaise etc. v. Louisiana State Board of Health*, 186 U. S. 391, 22 S. Ct. 811, 46 L. ed. 1209; *S. C.*, 51 La. Ann. 645, 72 Am. St. Rep. 458, 25 South. 591, 56 L. R. A. 795; *Hurst v. Warner*, 102 Mich. 238, 47 Am. St. Rep. 525, 60 N. W. 440, 26 L. R. A. 484; *St. Louis v. Boffinger*, 19 Mo. 13.

²⁶¹ *Gibbons v. Ogden*, 9 Wheat. 202, 6 L. ed. 23; *Henderson v. Mayor*, 92 U. S. 275, 23 L. ed. 543; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 661, 20 L. ed. 516.

²⁶² *Gibbons v. Ogden*, 9 Wheat. 205, 6 L. ed. 23; *Morgan's etc. S. S. Co. v. Louisiana*, 118 U. S. 464, 6 S. Ct. 1115, 30 L. ed. 237; *Lockwood v. Bartlett*, 130 N. Y. 340, 29 N. E. 257.

²⁶³ *Train v. Boston Disinfecting Co.*, 144 Mass. 531, 59 Am. Rep. 116, 11 N. E. 936.

²⁶⁴ *Greensboro v. Ehrenreich*, 80 Ala. 579, 60 Am. Rep. 130.

²⁶⁵ *Bowman v. Chicago etc. R. R.*, 125 U. S. 489, 8 S. Ct. 689, 31 L. ed. 700.

²⁶⁶ *Kimmish v. Ball*, 129 U. S. 222, 9 S. Ct. 277, 32 L. ed. 695; *Missouri etc. Ry. v. Haber*, 169 U. S. 623, 18 S. Ct. 488, 42 L. ed. 878; *S. C.*, 56 Kan. 708, 44 Pac. 637; *Reid v. Colorado*, 187 U. S. 137, 23 S. Ct. 92, 47 L. ed. 108, affirming 29 Colo. 333, 93 Am. St. Rep. 69, 68 Pac. 228; *Rasmussen v. Idaho*, 181 U. S. 198, 21 S. Ct. 594, 45 L. ed. 820; *Grimes v. Eddy*, 126 Mo. 168, 47 Am. St. Rep. 653, 28 S. W. 760, 26 L. R. A. 638.

disease.²⁶⁷ Nor can it forbid transportation of infected stock across its territory;²⁶⁸ but while it cannot interfere with such transportation, it may provide reasonable regulations as to the mode of transportation of livestock which is so badly infected as to be a menace to stock within the state.²⁶⁹ As a sanitary measure, a state may regulate the removal of dead bodies.²⁷⁰

Manufacture and sale of food or other articles deleterious to health may be prohibited under the police power,²⁷¹ and although the power to control the manufacture may involve indirectly the control of its disposition, it is not control of commerce within the constitution;²⁷² but the power to forbid the sale of an article does not carry the power to forbid its importation.²⁷³ Nor can a state interfere with interstate commerce in an article on the ground that it is deleterious to its inhabitants, so long as it is recognized by commercial usage and the laws of Congress as a legitimate subject of commerce.²⁷⁴ A

²⁶⁷ *Railroad v. Husen*, 95 U. S. 473, 24 L. ed. 527; *Chicago etc. R. R. v. Erickson*, 91 Ill. 615, 33 Am. Rep. 71; *Urton v. Sherlock*, 75 Mo. 248; *Grimes v. Eddy*, 126 Mo. 183, 47 Am. Rep. 662, 28 S. W. 760, 26 L. R. A. 638.

²⁶⁸ *Grimes v. Eddy*, 126 Mo. 168, 47 Am. St. Rep. 653, 28 S. W. 760, 26 L. R. A. 638.

²⁶⁹ *Kimmish v. Ball*, 129 U. S. 220, 9 S. Ct. 277, 32 L. ed. 695; *Grimes v. Eddy*, 126 Mo. 168, 47 Am. St. Rep. 763, 28 S. W. 760, 26 L. R. A. 638; *State v. Southern Ry.*, 119 N. C. 814, 56 Am. St. Rep. 689; *Norfolk etc. Ry. v. Commonwealth*, 93 Va. 749, 57 Am. St. Rep. 827, 24 S. E. 837, 34 L. R. A. 105; *Lacey v. Palmer*, 93 Va. 159, 57 Am. St. Rep. 795, 24 S. E. 930, 31 L. R. A. 822.

²⁷⁰ *In re Wong Quoy*, 6 Saw. 442, 2 Fed. 624.

²⁷¹ *Crutcher v. Kentucky*, 141 U. S. 60, 11 S. Ct. 851, 35 L. ed. 649; *Commonwealth v. Huntley*, 156 Mass. 248, 30 N. E. 1132, 15 L. R. A. 839; *Austin v. State*, 101 Tenn. 563, 70 Am. St. Rep. 703, 48 S. W. 305, 50 L. R. A. 478.

²⁷² *United States v. E. C. Knight Co.*, 156 U. S. 12, 15 S. Ct. 249, 39 L. ed. 325.

²⁷³ *Bowman v. Chicago etc. Ry.*, 125 U. S. 500, 8 S. Ct. 689, 31 L. ed. 700; *Rhodes v. Iowa*, 170 U. S. 416, 18 S. Ct. 664, 42 L. ed. 1088; *Schollenberger v. Pennsylvania*, 171 U. S. 15, 18 S. Ct. 757, 43 L. ed. 57; *State v. Goetze*, 43 W. Va. 495, 64 Am. St. Rep. 871, 27 S. E. 225.

²⁷⁴ *Schollenberger v. Pennsylvania*, 171 U. S. 14, 18 S. Ct. 757, 43 L. ed. 57; *Collins v. New Hampshire*, 171 U. S. 33, 18 S. Ct. 768,

statute forbidding persons peddling domestic goods to peddle goods of the same character if made or produced in other states cannot be sustained as a police regulation;²⁷⁵ but a statute intended to restrain the sale of nostrums by itinerants, who profess a knowledge of the art of healing, in order to make sales, is not a regulation of commerce but a valid police measure.²⁷⁶ The state may require commission merchants or persons selling farm products on commission to give bonds for the benefit of consumers.²⁷⁷

The manufacture of intoxicating liquors may be prohibited, notwithstanding it operates to preclude exportation;²⁷⁸ but where a state recognizes the manufacture, sale and use of intoxicating liquors as lawful, legislation discriminating against liquors imported from other states is void.²⁷⁹ A statute providing that no suit shall be maintained upon any claim or demand for intoxicating liquors purchased outside of the state for sale within, is not a commerce regulation.²⁸⁰ Until the enactment of the Wilson Act of 1890, intoxicating liquors were upon the same footing as any other commodity, and their importation could not be forbidden;²⁸¹ but since that time the traffic in intoxicating liquors has been subject to state regula-

43 L. ed. 60; *McGregor v. Cone*, 104 Iowa, 435, 65 Am. St. Rep. 522, 73 N. W. 1043, 39 L. R. A. 484.

²⁷⁵ *Sayre Borough v. Phillips*, 143 Pa. St. 482, 33 Am. St. Rep. 842, 24 Atl. 76, 16 L. R. A. 49.

²⁷⁶ *State v. Wheelock*, 95 Iowa, 577, 58 Am. St. Rep. 442, 64 N. W. 620, 30 L. R. A. 429.

²⁷⁷ *State v. Wagener*, 77 Minn. 483, 77 Am. St. Rep. 681, 80 N. W. 633, 46 L. R. A. 442.

²⁷⁸ *Kidd v. Pearson*, 128 U. S. 20, 9 S. Ct. 6, 32 L. ed. 346; *Tredway v. Bailey*, 32 Neb. 495, 29 Am. St. Rep. 447, 49 N. W. 216.

²⁷⁹ *Scott v. Donald*, 165 U. S. 101, 17 S. Ct. 265, 41 L. ed. 632.

²⁸⁰ *Kmowilton v. Doherty*, 87 Me. 518, 47 Am. St. Rep. 349, 33 Atl. 18.

²⁸¹ *Bowman v. Chicago etc. Ry.*, 125 U. S. 493, 8 S. Ct. 689, 31 L. ed. 700; *Leisy v. Hardin*, 135 U. S. 100, 10 S. Ct. 681, 34 L. ed. 128; *Lyng v. Michigan*, 135 U. S. 166, 10 S. Ct. 727, 34 L. ed. 150; *State v. Coonan*, 82 Iowa, 401, 48 N. W. 922; *State v. Deschamp*, 53 Ark. 493, 14 S. W. 653; *Haley v. State*, 42 Neb. 559, 47 Am. St. Rep. 720, 60 N. W. 963.

tion regardless of the fact of their importation.²⁸² The power of the states, however, does not extend to forbidding importation,²⁸³ nor does it extend to the seizure of a boat with imported liquor on board;²⁸⁴ it is only "upon their arrival in the state" that they become subject to the operation of state laws.²⁸⁵

Statutes requiring that convict-made goods shall be so marked before being offered for sale are void as to goods imported from other states,²⁸⁶ and a tax upon convict-made goods imported from other states is clearly a burden upon commerce.²⁸⁷

— Game and Fish Laws.

The police power includes the preservation of game and fish,²⁸⁸ and the states' power in this respect flows from the duty to preserve for their people a valuable food supply.²⁸⁹ The commerce clause does not affect the right of a state to prohibit the export of game,²⁹⁰ or to forbid persons to sell or to have wild game or fish in their possession at certain times of the

²⁸² *In re Rahrer*, 140 U. S. 562, 11 S. Ct. 865, 35 L. ed. 572; *In re Jordan*, 49 Fed. 243; *Stevens v. Ohio*, 93 Fed. 796.

²⁸³ *Rhodes v. Iowa*, 170 U. S. 419, 18 S. Ct. 664, 42 L. ed. 1083, reversing 90 Iowa, 501, 58 N. W. 889; *Vance v. W. A. Vandercook Co.*, 170 U. S. 445, 18 S. Ct. 677, 42 L. ed. 1100; *Ex parte Edgerton*, 59 Fed. 118; *Ex parte Jervey*, 66 Fed. 961.

²⁸⁴ *Jervey v. The Carolina*, 66 Fed. 1019.

²⁸⁵ *Rhodes v. Iowa*, 170 U. S. 419, 18 S. Ct. 664, 42 L. ed. 1088.

²⁸⁶ *People v. Hawkins*, 157 N. Y. 1, 68 Am. St. Rep. 736, 51 N. E. 257, 42 L. R. A. 490.

²⁸⁷ *Arnold v. Yanders*, 56 Ohio St. 417, 60 Am. St. Rep. 753, 47 N. E. 50.

²⁸⁸ *Lawton v. Steele*, 152 U. S. 136, 14 S. Ct. 499, 38 L. ed. 385; *Manchester v. Massachusetts*, 139 U. S. 264, 11 S. Ct. 559, 35 L. ed. 159; *Magner v. People*, 97 Ill. 320; *State v. Randolph*, 1 Mo. App. 15; *People v. O'Neil*, 110 Mich. 324, 68 N. W. 227, 33 L. R. A. 696; *State v. Judy*, 7 Mo. App. 524.

²⁸⁹ *Geer v. Connecticut*, 161 U. S. 534, 16 S. Ct. 600, 40 L. ed. 793; *Haggerty v. Illinois Mfg. Co.*, 143 Mo. 243, 65 Am. St. Rep. 649, 44 S. W. 1114, 40 L. R. A. 151.

²⁹⁰ *Geer v. Connecticut*, 161 U. S. 519, 16 S. Ct. 600, 40 L. ed. 793, affirming 61 Conn. 144, 22 Atl. 1012, 13 L. R. A. 804; *Organ v. State*, 56 Ark. 267, 19 S. W. 840; *State v. Northern Pac. Exp. Co.*, 58 Minn. 403, 59 N. W. 1100. *Contra*, *Territory v. Evans*, 2 Idaho, 634, 23 Pac. 115, 7 L. R. A. 288; *State v. Saunders*, 19 Kan. 127, 27 Am. Rep. 98.

year,²⁹¹ notwithstanding such game or fish may have been killed or taken lawfully in other states,²⁹² and commerce therein may be precluded.²⁹³

Upon the Revolution the people of each state became sovereign over the navigable waters and the lands under them within the limits of the state,²⁹⁴ with the right of eminent domain over them.²⁹⁵ The admission of new states gives them the same absolute rights as other states, notwithstanding the title was originally in the United States while they were territories,²⁹⁶ for upon the acquisition of new territory such title vests in the United States merely in trust for the states thereafter to be created therefrom.²⁹⁷ The states may regulate the planting of oysters within their territorial limits;²⁹⁸ and a law which forbids nonresidents to plant or take oysters in state waters is not

²⁹¹ *Both v. State*, 51 Ohio St. 209, 46 Am. St. Rep. 566, 37 N. E. 259; *Dunham v. Lamphere*, 3 Gray, 268.

²⁹² *Magner v. People*, 97 Ill. 320; *State v. Randolph*, 1 Mo. App. 15.

²⁹³ *Ex parte Maier*, 103 Cal. 476, 42 Am. St. Rep. 129, 37 Pac. 402. *Contra*, *People v. Buffalo Fish Co.*, 164 N. Y. 93, 79 Am. St. Rep. 622, 58 N. E. 34, 52 L. R. A. 803.

²⁹⁴ *Martin v. Waddell*, 16 Pet. 419, 10 L. ed. 997; *Pollard v. Hagan*, 3 How. 212, 11 L. ed. 565; *Smith v. Maryland*, 18 How. 74, 15 L. ed. 269; *Gilman v. Philadelphia*, 3 Wall. 726, 18 L. ed. 432; *Shively v. Bowlby*, 152 U. S. 15, 14 S. Ct. 548, 38 L. ed. 331; *Mobile v. Eslava*, 16 Pet. 264, affirming 9 Port. 577, 33 Am. Dec. 325; *Duval v. McLoskey*, 1 Ala. 708; *Kemp v. Thorp*, 3 Ala. 291; *Pollard v. Files*, 3 Ala. 47.

²⁹⁵ *Pollard v. Hagan*, 3 How. 212, 11 L. ed. 565; *Martin v. Waddell*, 16 Pet. 367, 10 L. ed. 997; *Russell v. New Jersey Comp.*, 15 How. 426, 14 L. ed. 757.

²⁹⁶ *Pollard v. Hagan*, 3 How. 212, 11 L. ed. 565; *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23; *Pennsylvania v. Wheeling Bridge*, 18 How. 421, 15 L. ed. 435; *Gilman v. Philadelphia*, 3 Wall. 713, 18 L. ed. 96; *Mumford v. Wardwell*, 6 Wall. 423, 18 L. ed. 756; *Goodtitle v. Kibbe*, 9 How. 477, 13 L. ed. 220; *County of St. Clair v. Livingston*, 23 Wall. 68, 23 L. ed. 59; *Morris v. United States*, 174 U. S. 236, 19 S. Ct. 174, 43 L. ed. 946.

²⁹⁷ *Shively v. Bowlby*, 152 U. S. 57, 14 S. Ct. 548, 38 L. ed. 331; *Weber v. Harbor Comms.*, 18 Wall. 66, 21 L. ed. 798.

²⁹⁸ *Smith v. Maryland*, 18 How. 71, 15 L. ed. 269; *State v. Harrub*, 95 Ala. 182, 10 South. 753, 36 Am. St. Rep. 197, 15 L. R. A. 761.

void as a regulation of commerce.²⁹⁹ Nor is it material that a vessel seized for violation of such a law is duly licensed under an act of Congress;³⁰⁰ and an act requiring that vessels engaged in oyster dredging shall procure licenses is not void as an interference with navigation or a burden upon commerce.³⁰¹ By the grant of the commerce power to Congress the states surrendered no control over its fisheries and they are subject to protection or regulation under the police power.³⁰²

Taxation of Property.

A state cannot impose a tax upon the movement of commerce between the states,³⁰³ although the same tax be imposed upon domestic commerce;³⁰⁴ nor can a state, under the guise of a tax upon domestic business impose a burden upon interstate commerce when the business so taxed is itself interstate commerce;³⁰⁵ but where the subjects of taxation can be separated

²⁹⁹ *McCready v. Virginia*, 94 U. S. 394, 24 L. ed. 248, affirming 27 Gratt. 987; *Corfield v. Coryell*, 4 Wash. 377.

³⁰⁰ *Smith v. Maryland*, 18 How. 71, 15 L. ed. 269; *The Ann*, 5 Hughes, 296, 8 Fed. 926; *Commonwealth v. Manchester*, 152 Mass. 243, 23 Am. St. Rep. 831, 25 N. E. 117, 9 L. R. A. 236.

³⁰¹ *Dize v. Lloyd*, 36 Fed. 651.

³⁰² *United States v. Bevans*, 3 Wheat. 337, 4 L. ed. 404; *Martin v. Waddell*, 16 Pet. 419, 10 L. ed. 997; *Smith v. Maryland*, 18 How. 71, 15 L. ed. 269; *Manchester v. Massachusetts*, 139 U. S. 260, 11 S. Ct. 562, 35 L. ed. 159; affirming 152 Mass. 243, 23 Am. St. Rep. 831, 25 N. E. 117, 9 L. R. A. 236; *Bennett v. Boggs*, *Baldw.* 76, Fed. Cas. No. 1319; *The Martha Anne*, *Olcott*, 22, Fed. Cas. No. 9146; *Weston v. Sampson*, 8 Cush. 347, 54 Am. Dec. 764; *Peck v. Lockwood*, 5 Day, 22; *Arnold v. Mundy*, 1 Halst. 1, 10 Am. Dec. 356; *Stuttsman v. State*, 57 Ind. 119; *Parker v. Cutler etc. Corp.*, 20 Me. 353, 27 Am. Dec. 56; *Fleet v. Hegeman*, 14 Wend. 42; *Commonwealth v. Weatherhead*, 110 Mass. 175; *Gentile v. State*, 29 Ind. 409; *State v. Tower*, 84 Me. 445, 24 Atl. 899.

³⁰³ *Railroad Co. v. Maryland*, 21 Wall. 472, 22 L. ed. 678; *Pickard v. Railroad Co.*, 117 U. S. 48, 6 S. Ct. 642, 29 L. ed. 785; *Ashley v. Ryan*, 153 U. S. 440, 14 S. Ct. 865, 38 L. ed. 773; *Lyng v. Michigan*, 135 U. S. 166, 10 S. Ct. 725, 34 L. ed. 150; *McNaughton v. McGirl*, 20 Mont. 124, 63 Am. St. Rep. 610, 49 Pac. 621, 38 L. R. A. 367.

³⁰⁴ *Robbins v. Shelby County Tax. Dist.*, 120 U. S. 497, 7 S. Ct. 592, 30 L. ed. 694; *Philadelphia etc. S. S. Co. v. Pennsylvania*, 122 U. S. 340, 7 S. Ct. 1118, 30 L. ed. 1200.

³⁰⁵ *Fargo v. Michigan*, 121 U. S. 244, 7 S. Ct. 857, 30 L. ed. 888;

so that that which arises from interstate commerce can be distinguished from that arising from domestic commerce, the courts will hold the tax void only so far as the former is affected.³⁰⁶ To be unlawful, however, the interference must be direct, and not the mere incidental effect of the requirement of the usual contribution to public maintenance.³⁰⁷

Ships or vessels are taxable by the states, as property, in their home ports, notwithstanding they may be licensed as coasting vessels under federal laws;³⁰⁸ but the tax must be upon them as private property, and not as instruments of commerce and navigation,³⁰⁹ and must be levied in the home port.³¹⁰ So a state cannot tax vessels merely temporarily within its jurisdiction for the purpose of discharging freight and passengers;³¹¹ but the enrollment of a vessel in a port of another state does not affect her registry or ownership in her home port.³¹² The

McCall v. California, 136 U. S. 110, 10 S. Ct. 883, 34 L. ed. 391; *State v. Stephens*, 146 Mo. 681, 69 Am. St. Rep. 636, 48 S. W. 934.

³⁰⁶ *Batterman v. Western Union Tel. Co.*, 127 U. S. 424, 8 S. Ct. 1127, 32 L. ed. 229; *Western etc. Co. v. Alabama Board etc.*, 132 U. S. 475, 10 S. Ct. 162, 33 L. ed. 409; *Postal etc. Cable Co. v. Charleston*, 153 U. S. 697, 14 S. Ct. 1096, 28 L. ed. 871; *Lehigh etc. R. R. v. Pennsylvania*, 145 U. S. 200, 12 S. Ct. 806, 36 L. ed. 672.

³⁰⁷ *Erie R. R. v. Pennsylvania*, 158 U. S. 439, 15 S. Ct. 900, 39 L. ed. 1043; *Henderson Bridge Co. v. Kentucky*, 166 U. S. 154, 17 S. Ct. 533, 41 L. ed. 953.

³⁰⁸ *Transportation Co. v. Wheeling*, 99 U. S. 279, 25 L. ed. 412; *Moran v. New Orleans*, 112 U. S. 75, 5 S. Ct. 38, 28 L. ed. 653; *Linehan etc. Co. v. Pendergass*, 70 Fed. 2; *Oteri v. Parker*, 42 La. Ann. 379, 7 South. 571.

³⁰⁹ *State Tonnage Tax Cases*, 12 Wall. 213, 20 L. ed. 370; *Battle v. Mobile*, 9 Ala. 234, 44 Am. Dec. 438; *Howell v. State*, 3 Gill, 14; *Gunther v. Baltimore*, 55 Md. 457; *People v. Commissioners*, 48 Barb. 157.

³¹⁰ *Morgan v. Parham*, 16 Wall. 476, 21 L. ed. 303; *Peete v. Morgan*, 19 Wall. 581, 22 L. ed. 201; *Transportation Co. v. Wheeling*, 99 U. S. 273, 25 L. ed. 412, affirming 9 W. Va. 170, 27 Am. Rep. 552; *Cook v. Port Fulton*, 106 Ind. 173, 6 N. E. 323; *New Orleans v. Eclipse Towboat Co.*, 33 La. Ann. 650, 39 Am. Rep. 232.

³¹¹ *Hays v. Pacific Mail S. S. Co.*, 17 How. 596, 15 L. ed. 254; *Morgan v. Parham*, 16 Wall. 478, 21 L. ed. 303; *Clarke v. Philadelphia etc. Co.*, 4 Houst. 158.

³¹² *Morgan v. Parham*, 16 Wall. 476, 21 L. ed. 303; *The Lotus No. 2*, 26 Fed. 640.

same rules are applicable to ferry-boats plying between different states.³¹⁴ A tax upon water-craft in which goods are sold by retail is valid, although the goods are brought from another state.³¹⁵

Bridges and bridge companies are subject to taxation, notwithstanding the bridge taxed connects two states.³¹⁶ A tax upon the franchise of a bridge company is not a tax on interstate commerce, although the bridge is used by an interstate carrier,³¹⁷ nor is a tax upon the capital stock of a bridge company a burden on commerce when the company itself is not engaged in interstate commerce.³¹⁸ The right of the states is not affected by the fact that bridges subjected to tax are made post roads by act of Congress.³¹⁹

Foreign corporations and corporations engaged in interstate commerce are taxable upon their property and franchises, if foreign or interstate commerce is not thereby directly impeded.³²⁰ The existence of the power of Congress to supervise interstate commerce is not inconsistent with the power of the

³¹⁴ Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 210, 5 S. Ct. 826, 29 L. ed. 158; Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 27 L. ed. 419.

³¹⁵ Harrison v. Mayor, 11 Miss. 581, 4 Am. Dec. 633.

³¹⁶ Henderson Br. Co. v. Henderson City, 141 U. S. 689, 12 S. Ct. 114, 43 L. ed. 823; Pittsburgh etc. Ry. v. Board, 172 U. S. 43, 19 S. Ct. 94, 43 L. ed. 354; Henderson Br. Co. v. Henderson City, 173 U. S. 623, 19 S. Ct. 565, 43 L. ed. 823.

³¹⁷ Henderson Br. Co. v. Kentucky, 166 U. S. 154, 17 S. Ct. 532, 41 L. ed. 953.

³¹⁸ Keokuk etc. Br. Co. v. Illinois, 175 U. S. 632, 20 S. Ct. 207, 44 L. ed. 299.

³¹⁹ Henderson Br. Co. v. Kentucky, 166 U. S. 154, 17 S. Ct. 532, 41 L. ed. 953.

³²⁰ Liverpool Ins. Co. v. Massachusetts, 10 Wall. 566, 19 L. ed. 1025; Philadelphia etc. S. S. Co. v. Pennsylvania, 122 U. S. 345, 7 S. Ct. 1118, 30 L. ed. 1200; Horn Silver Mining Co. v. New York, 143 U. S. 317, 12 S. Ct. 403, 36 L. ed. 164; Ashley v. Ryan, 153 U. S. 446, 14 S. Ct. 865, 38 L. ed. 773; Postal Tel. Co. v. Adams, 155 U. S. 696, 15 S. Ct. 360, 39 L. ed. 311; Oakland Sugar Mill Co. v. Fred W. Wolf Co., 118 Fed. 239; Singer Mfg. Co. v. Wright, 33 Fed. 121; Indianapolis etc. R. R. Co. v. Backus, 133 Ind. 609, 33 N. E. 443; People v. Wemple, 117 N. Y. 136, 27 Am. St. Rep. 542, 22 N. E. 1046, 6 L. R. A. 303.

state to levy such taxes,³²¹ if they are not essentially burdens upon commerce.³²² A direct tax upon commerce, such as that for keeping an office in the state, is void as to railroads engaged in interstate commerce,³²³ but a tax assessed against a corporation having power to engage in foreign or interstate commerce is not void unless the corporation is actually so engaged.³²⁴ A tax upon corporate property or franchises based upon the capital employed in the state is not void merely because the capital may be invested in shipping,³²⁵ nor because some of it may be represented by imported articles in original packages.³²⁶ The fact that a corporation is engaged in the service of the United States will not exempt its property from taxation where Congress has not expressly exempted it.³²⁷

Transportation companies are subject to state taxation,³²⁸ although a tax imposed upon transportation itself is void.³²⁹

³²¹ *Erie R. R. v. Pennsylvania*, 158 U. S. 437, 15 S. Ct. 900, 39 L. ed. 1043.

³²² *Commonwealth v. Smith*, 92 Ky. 38, 36 Am. St. Rep. 578, 17 S. W. 187.

³²³ *Norfolk etc. R. R. v. Pennsylvania*, 136 U. S. 120, 10 S. Ct. 958, 34 L. ed. 394.

³²⁴ *Honduras Com. Co. v. State Board*, 54 N. J. L. 278, 23 Atl. 668.

³²⁵ *Delaware R. R. Tax Case*, 18 Wall. 232, 21 L. ed. 888; *Barney v. Tax Collector*, 2 Bail. 654; *South Carolina v. Charleston*, 4 Rich. 289.

³²⁶ *New York v. Roberts*, 171 U. S. 665, 19 S. Ct. 70, 43 L. ed. 323.

³²⁷ *Lane County v. Oregon*, 7 Wall. 77, 19 L. ed. 101; *Thomson v. Pacific R. R.*, 9 Wall. 591, 19 L. ed. 792; *Pullman Car Co. v. Pennsylvania*, 141 U. S. 22, 11 S. Ct. 878, 35 L. ed. 613; *Central etc. R. R. v. California*, 162 U. S. 121, 16 S. Ct. 777, 40 L. ed. 906.

³²⁸ *The Delaware R. R. Tax*, 18 Wall. 232, 21 L. ed. 888; *Erie Ry. v. Pennsylvania*, 21 Wall. 498, 22 L. ed. 595; *State Railroad Tax Cases*, 92 U. S. 611, 23 L. ed. 663; *Pittsburgh Ry. v. Backus*, 154 U. S. 431, 14 S. Ct. 1118, 38 L. ed. 1031; *Adams Exp. Co. v. Ohio*, 165 U. S. 226, 17 S. Ct. 311, 41 L. ed. 683; *State v. Philadelphia etc. S. S. Co.*, 45 Md. 381, 24 Am. Rep. 516; *People v. Central etc. R. R.*, 43 Cal. 398; *Piedmont etc. R. R. v. Reidsville*, 101 N. C. 407, 8 S. E. 126.

³²⁹ *Osborne v. Mobile*, 16 Wall. 481, 21 L. ed. 470; *Fargo v. Michigan*, 121 U. S. 243, 7 S. Ct. 857, 30 L. ed. 888; *State v. Cumberland etc. R. R.*, 40 Md. 48.

A tax upon fares and freights received for transportation is virtually a tax upon transportation,³³⁰ and cannot be upheld under the plea that it is a tax upon a franchise granted by the state.³³¹ Accordingly, a tax upon gross receipts derived from interstate or foreign transportation is void,³³² but the mere reference to gross receipts as a basis for determining the amount of a tax does not constitute the tax one upon the gross receipts.³³³ A tax upon the receiving and landing of passengers is a tax upon transportation and so void.³³⁴ A tax upon passengers leaving a state has been held void, not as a tax upon commerce, but as abridging the right of citizens to pass freely through every part of the United States.³³⁵

Express companies may be taxed upon their property within the state,³³⁶ and such a tax is not one upon interstate commerce,

³³⁰ *Philadelphia etc. Co. v. Pennsylvania*, 122 U. S. 342, 7 S. Ct. 1118, 30 L. ed. 1200; *Brennan v. Titusville*, 153 U. S. 308, 14 S. Ct. 829, 38 L. ed. 719; *Western Union Tel. Co. v. Alabama*, 132 U. S. 473, 10 S. Ct. 162, 33 L. ed. 409; *Vermont etc. R. R. Co. v. Vermont Cent. Ry. Co.*, 63 Vt. 1, 22 Atl. 262, 10 L. R. A. 562.

³³¹ *Case of State Freight Tax*, 15 Wall. 273, 21 L. ed. 146; *Philadelphia etc. Co. v. Pennsylvania*, 122 U. S. 342, 7 S. Ct. 1118, 30 L. ed. 1200; *Coit v. Sutton*, 102 Mich. 327, 60 N. W. 691, 25 L. R. A. 819.

³³² *Fargo v. Michigan*, 121 U. S. 243, 7 S. Ct. 857, 30 L. ed. 888; *Philadelphia etc. Co. v. Pennsylvania*, 122 U. S. 342, 7 S. Ct. 1118; 30 L. ed. 1200; *Erie R. R. v. Pennsylvania*, 158 U. S. 437, 15 S. Ct. 900, 39 L. ed. 1043; *Northern etc. R. R. v. Barnes*, 2 N. Dak. 351, 51 N. W. 397; *Indiana v. American Exp. Co.*, 7 Biss. 230, Fed. Cas. No. 7021; *State v. Pullman Palace Car Co.*, 11 Biss. 566, 16 Fed. 200; but see *Reading R. R. v. Pennsylvania*, 15 Wall. 296, 21 L. ed. 164.

³³³ *Maine v. Grand Trunk Ry.*, 142 U. S. 228, 12 S. Ct. 121, 35 L. ed. 994; *New York etc. R. R. v. Pennsylvania*, 158 U. S. 440, 15 S. Ct. 900, 30 L. ed. 1042; *Adams Exp. Co. v. Ohio*, 165 U. S. 220, 17 S. Ct. 309, 41 L. ed. 683; *Erie R. R. Co. v. Pennsylvania*, 158 U. S. 440, 15 S. Ct. 900, 30 L. ed. 1043.

³³⁴ *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 203, 5 S. Ct. 826, 29 L. ed. 158.

³³⁵ *Crandall v. Nevada*, 6 Wall. 49, 18 L. ed. 745; *Treasurer v. Philadelphia etc. R. R.*, 4 Houst. 189.

³³⁶ *Adams Express Co. v. Ohio*, 165 U. S. 220, 17 S. Ct. 305, 41 L. ed. 683; *Wells, Fargo & Co. v. Crawford County*, 63 Ark. 588, 40 S. W. 713, 37 L. R. A. 371.

although the companies taxed do an interstate business.³³⁷ Express companies which confine their business to interstate or foreign transportation are exempt from state taxation or regulation; but if they engage also in domestic commerce, they are subject to state taxation and regulation to that extent.³³⁸ Property within the state may be taxed on the basis of the proportion it bears to the whole,³³⁹ and gross earnings may be taken as the measure of a property tax as in the case of other corporations,³⁴⁰ but at the same time the tax must be upon the property of the company, and not upon the business of interstate carriage.³⁴¹

Telegraphic communication is commerce, and if between the states it is free from state control,³⁴² but the property of a telegraph company is subject to state taxation.³⁴³ A municipal tax on foreign telegraph companies expressly restricted to

³³⁷ *Pacific Express Co. v. Seibert*, 142 U. S. 350, 12 S. Ct. 250, 35 L. ed. 1035.

³³⁸ *United States Exp. Co. v. Hemmingway*, 39 Fed. 60; *Osborn v. State*, 33 Fla. 162, 39 Am. St. Rep. 99, 14 South. 590, 25 L. R. A. 120.

³³⁹ *Adams Exp. Co. v. Ohio*, 165 U. S. 220, 17 S. Ct. 305, 41 L. ed. 683.

³⁴⁰ *Adams Exp. Co. v. Ohio*, 165 U. S. 220, 17 S. Ct. 305, 41 L. ed. 683; *Wolcott v. People*, 17 Mich. 68; *American Union Exp. Co. v. St. Joseph*, 66 Mo. 675, 27 Am. Rep. 382; *Southern Exp. Co. v. Hood*, 15 Rich. 66, 94 Am. Dec. 141; *State v. State Board*, 3 S. Dak. 388, 53 N. W. 192.

³⁴¹ *United States Exp. Co. v. Allen*, 39 Fed. 714; *Commonwealth v. Smith*, 92 Ky. 38, 17 S. W. 187.

³⁴² *Leloup v. Mobile*, 127 U. S. 645, 8 S. Ct. 1380, 32 L. ed. 311; *Western Union Tel. Co. v. Alabama Bd. etc.*, 132 U. S. 477, 10 S. Ct. 163, 33 L. ed. 409, reversing 80 Ala. 273, 60 Am. Rep. 99; *Western Union Tel. Co. v. Texas*, 105 U. S. 460, 26 L. ed. 1067.

³⁴³ *Leloup v. Mobile*, 127 U. S. 649, 8 S. Ct. 1380, 32 L. ed. 311; *Western Union Tel. Co. v. Missouri*, 190 U. S. 412, 23 S. Ct. 730, 47 L. ed. 1116; *Western Union Tel. Co. v. Taggart*, 163 U. S. 18, 16 S. Ct. 1054, 41 L. ed. 49; *Atlantic & Pacific Tel. Co. v. Philadelphia*, 190 U. S. 160, 23 S. Ct. 817, 47 L. ed. 995; *Postal Tel. Cable Co. v. Adams*, 155 U. S. 689, 15 S. Ct. 268, 39 L. ed. 311, affirming 71 Miss. 555, 42 Am. St. Rep. 476, 14 South. 36; *Postal Tel. Co. v. Richmond*, 99 Va. 102, 86 Am. St. Rep. 877, 37 S. E. 789; *Attorney General v. Western Union Tel. Co.*, 33 Fed. 129.

business exclusively within the city is valid.³⁴⁴ Messages carried and delivered within the state are subject to taxation,³⁴⁵ and while a state cannot tax a telegraph company on its interstate business, the fact that a tax is assessed without apportionment as between domestic and interstate business does not render it wholly void, but only as to the proportion of interstate business.³⁴⁶ That a message, in order to pass between two points in the same state, must traverse another state, does not make the transmission interstate commerce.³⁴⁷ A tax upon telegraph companies based upon the length of lines within the state, in lieu of all other taxes, is substantially a tax upon property.³⁴⁸ Gross receipts or capital or value of property, may be taken as a basis for the assessment of taxes.³⁴⁹ The sending of interstate telephone messages cannot be enjoined because the company has not paid its taxes.³⁵⁰

³⁴⁴ *Postal Tel. Cable Co. v. Charleston*, 153 U. S. 699, 14 S. Ct. 1094, 38 L. ed. 871.

³⁴⁵ *Western Union Tel. Co. v. Alabama Board*, 132 U. S. 473, 10 S. Ct. 161, 33 L. ed. 409; *Western Union Tel. Co. v. City Council*, 56 Fed. 422; *Western Union Tel. Co. v. Fremont*, 39 Neb. 706, 58 N. W. 419, 26 L. R. A. 698.

³⁴⁶ *Ratterman v. Western Union Tel. Co.*, 127 U. S. 427, 8 S. Ct. 1127, 32 L. ed. 229; *Western Union Tel. Co. v. Pennsylvania*, 128 U. S. 39, 9 S. Ct. 6, 32 L. ed. 345; *People v. Terney*, 57 Hun, 327, 10 N. Y. Supp. 940; *Philadelphia v. American Union Tel. Co.*, 167 Pa. St. 406, 31 Atl. 628.

³⁴⁷ *Western Union Tel. Co. v. Reynolds*, 100 Va. 459, 93 Am. St. Rep. 971, 41 S. E. 856.

³⁴⁸ *Postal Tel. Cable Co. v. Adams*, 155 U. S. 688, 15 S. Ct. 268, 39 L. ed. 37, affirming 71 Miss. 555, 42 Am. St. Rep. 476, 14 South. 36; *Western Union Tel. Co. v. Tyler*, 90 Va. 297, 44 Am. St. Rep. 910, 18 S. E. 280; *People v. Terney*, 57 Hun, 357, 10 N. Y. Supp. 940; *Philadelphia v. American Union Tel. Co.*, 167 Pa. St. 406, 31 Atl. 628. But see *Commonwealth v. Smith*, 92 Ky. 38, 36 Am. St. Rep. 578, 17 S. W. 187.

³⁴⁹ *Massachusetts v. Western Union Tel. Co.*, 141 U. S. 40, 11 S. Ct. 889, 35 L. ed. 628; *Western Union Tel. Co. v. State*, 80 Ala. 273, 60 Am. Rep. 99; *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521; *Western Union Tel. Co. v. Commonwealth*, 110 Pa. St. 405, 20 Atl. 720.

³⁵⁰ *In re Pennsylvania Tel. Co.*, 48 N. J. Eq. 91, 27 Am. St. Rep. 462, 20 Atl. 846.

The instruments and vehicles of interstate commerce may be taxed by the states.³⁵¹ The mere fact that they are used in interstate commerce does not render their taxation by the state where they are used invalid,³⁵² and the fact that the value of such property arises from its use in interstate commerce is immaterial so long as the tax imposes no additional burden on that commerce,³⁵³ and provided the powers of the national government are not interfered with.³⁵⁴ Accordingly, a state may tax sleeping-cars,³⁵⁵ refrigerator-cars,³⁵⁶ and vessels.³⁵⁷ Such a tax may be based upon the average number of cars in the state at the time the assessment is made,³⁵⁸ or upon the ratio of local

³⁵¹ *Morgan v. Parham*, 16 Wall. 475, 21 L. ed. 303; *Covington etc. Bridge Co. v. Kentucky*, 154 U. S. 212, 14 S. Ct. 1087, 38 L. ed. 962.

³⁵² *Marye v. Baltimore etc. R. R.*, 127 U. S. 124, 8 S. Ct. 1037, 32 L. ed. 94; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 23, 11 S. Ct. 876, 35 L. ed. 613; *Massachusetts v. Western Union Tel. Co.*, 141 U. S. 45, 11 S. Ct. 889, 35 L. ed. 628.

³⁵³ *Cleveland etc. Ry. v. Backus*, 154 U. S. 445, 14 S. Ct. 1122, 38 L. ed. 1041; *Western Union Tel. Co. v. Norman*, 77 Fed. 23; *State v. Stephens*, 146 Mo. 681, 69 Am. St. Rep. 636, 48 S. W. 934.

³⁵⁴ *Western Union Tel. Co. v. Taggart*, 163 U. S. 14, 16 S. Ct. 1054, 41 L. ed. 49.

³⁵⁵ *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 S. Ct. 876, 35 L. ed. 613; *Pullman's Palace Car Co. v. Hayward*, 141 U. S. 36, 11 S. Ct. 883, 35 L. ed. 621, affirming 107 Pa. St. 148; *Pullman Co. v. Adams*, 189 U. S. 420, 23 S. Ct. 494, 47 L. ed. 877. But see *Pickard v. Pullman etc. Car Co.*, 117 U. S. 51, 8 S. Ct. 635, 29 L. ed. 785.

³⁵⁶ *American etc. Transit Co. v. Hall*, 174 U. S. 82, 19 S. Ct. 604, 43 L. ed. 899, affirming 24 Colo. 301, 65 Am. St. Rep. 228, 51 Pac. 425, 56 L. R. A. 89; *Linehan etc. Transf. Co. v. Pendergass*, 70 Fed. 2; *Reinhart v. McDonald*, 76 Fed. 405; *Transit Co. v. Lynch*, 18 Utah, 394, 55 Pac. 643, 48 L. R. A. 790.

³⁵⁷ *Hays v. Pacific Mail S. S. Co.*, 17 How. 596, 15 L. ed. 254; *Morgan v. Parham*, 16 Wall. 471; *Wheeling etc. Transp. Co. v. Wheeling*, 99 U. S. 273, 25 L. ed. 412, affirming 9 W. Va. 170, 27 Am. Rep. 552; *Battle v. Mobile*, 9 Ala. 234, 44 Am. Dec. 438.

³⁵⁸ *American etc. Transit Co. v. Hall*, 174 U. S. 81, 19 S. Ct. 604, 43 L. ed. 899.

mileage to the company's capital.³⁵⁹ Rolling stock merely passing through a state, however, is not subject to taxation.³⁶⁰

— Licenses or Privilege Taxes.

States may impose license taxes upon trades, avocations, or professions carried on within their borders, although the goods dealt in are manufactured in other states,³⁶¹ provided such taxes do not discriminate in favor of their own products as against those of other states.³⁶² And this power may be delegated to municipalities.³⁶³

A state may exact licenses for sales of goods in the vendor's actual possession within the state,³⁶⁴ and the fact that title is in a nonresident is immaterial.³⁶⁵ A law exacting a license tax

³⁵⁹ *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 23, 11 S. Ct. 878, 35 L. ed. 613; *Cleveland etc. Ry. v. Backus*, 154 U. S. 445, 14 S. Ct. 1124, 38 L. ed. 1041.

³⁶⁰ *Bain v. Richmond etc. R. R.*, 105 N. C. 363, 18 Am. St. Rep. 912, 11 S. E. 311, 8 L. R. A. 299.

³⁶¹ *Brown v. Maryland*, 12 Wheat. 441, 6 L. ed. 678; *Nathan v. Louisiana*, 8 How. 73, 12 L. ed. 992; *Duer v. Small*, 4 Blatchf. 267, Fed. Cas. No. 4116; *Osborne v. Mobile*, 44 Ala. 499; *Galveston Co. v. Gorham*, 49 Tex. 279; *State v. Gorham*, 115 N. C. 721, 44 Am. St. Rep. 494, 20 S. E. 179, 25 L. R. A. 810; *Charleston v. Oliver*, 16 S. C. 47; *In re Rudolph*, 6 Saw. 295, 2 Fed. 65; *Ex parte Robinson*, 12 Nev. 263, 28 Am. Rep. 794.

³⁶² *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449; *Conner v. Elliott*, 18 How. 593, 15 L. ed. 497; *Woodruff v. Parham*, 8 Wall. 123, 19 L. ed. 382; *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Missouri v. North*, 27 Mo. 464; *State v. French*, 109 N. C. 722, 26 Am. St. Rep. 590, 14 S. E. 353.

³⁶³ *Downham v. Alexandria*, 10 Wall. 173, 19 L. ed. 929; *Logansport v. Seybold*, 59 Ind. 225; *Chilvers v. People*, 11 Mich. 43; *People v. Babcock*, 11 Wend. 586; *Little Rock v. Prather*, 49 Ark. 477; *Wiggins Ferry Co. v. East St. Louis*, 102 Ill. 574.

³⁶⁴ *Emert v. Missouri*, 156 U. S. 311, 15 S. Ct. 367, 39 L. ed. 430; *Patapsco Guano Co. v. North Carolina*, 171 U. S. 359, 18 S. Ct. 862, 43 L. ed. 191; *Oliver Finney Grocery Co. v. Speed*, 87 Fed. 415; *Duncan v. State*, 105 Ga. 457, 30 S. E. 755; *Rash v. Farley*, 91 Ky. 344, 34 Am. St. Rep. 233, 15 S. W. 862; *State v. Montgomery*, 92 Me. 440, 43 Atl. 16.

³⁶⁵ *South Bend v. Martin*, 142 Ind. 46, 41 N. E. 319, 29 L. R. A. 531.

for the privilege of carrying on interstate commerce is void,³⁶⁶ as is also a law discriminating in favor of domestic goods as against those produced in other states.³⁶⁷ A tax upon convict-made goods manufactured in other states is void on this ground.³⁶⁸ A statute restricting the right to licenses to residents is clearly invalid as placing a burden upon commerce.³⁶⁹

The right to sell intoxicating liquors cannot be exercised under a federal license contrary to state laws; such a license is in the nature of a receipt for the federal tax,³⁷⁰ and state laws may impose another license tax,³⁷¹ or authorize municipalities to do so,³⁷² and a license under the internal revenue laws is no bar to a prosecution under state law for selling without a state

³⁶⁶ *Crutcher v. Kentucky*, 141 U. S. 53, 11 S. Ct. 851, 35 L. ed. 649; *Georgia etc. Co. v. Mayor*, 6 Fed. 780; *Aultman v. Holder*, 68 Fed. 471; *Commonwealth v. Smith*, 92 Ky. 42, 36 Am. St. Rep. 580, 17 S. W. 188; *Osborne v. State*, 33 Fla. 162, 39 Am. St. Rep. 99, 14 South. 588, 25 L. R. A. 120.

³⁶⁷ *Ward v. Maryland*, 12 Wall. 418, 20 L. ed. 449; *Guy v. Baltimore*, 100 U. S. 434, 25 L. ed. 743; *Georgia etc. Co. v. Macon*, 60 Fed. 774, 22 L. R. A. 775; *Ex parte Thomas*, 71 Cal. 204, 12 Pac. 53; *Carson v. State*, 57 Md. 251; *Vines v. State*, 67 Ala. 73; *Powell v. State*, 69 Ala. 10; *Albertson v. Wallace*, 81 N. C. 479.

³⁶⁸ *Arnold v. Yanders*, 56 Ohio St. 417, 60 Am. St. Rep. 753, 47 N. E. 50; *People v. Hawkins*, 157 N. Y. 1, 68 Am. St. Rep. 736, 51 N. E. 257, 42 L. R. A. 490.

³⁶⁹ *Sayre v. Phillips*, 148 Pa. St. 482, 33 Am. St. Rep. 842, 24 Atl. 76, 16 L. R. A. 49.

³⁷⁰ *License Cases*, 5 Wall. 470, 18 L. ed. 497; *McGuire v. Commonwealth*, 3 Wall. 387, 18 L. ed. 226; *Pervear v. Commonwealth*, 5 Wall. 475, 18 L. ed. 608.

³⁷¹ *Gilman v. Philadelphia*, 3 Wall. 730, 18 L. ed. 96; *McGuire v. Commonwealth*, 3 Wall. 387, 18 L. ed. 226; *Kohn v. Melcher*, 29 Fed. 433; *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323; *Metropolitan Board v. Barrie*, 34 N. Y. 657; *Ex parte Christensen*, 85 Cal. 208, 24 Pac. 747; *Keller v. State*, 11 Md. 525, 65 Am. Dec. 226; *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 326; *Santo v. State*, 2 Iowa, 165, 63 Am. Dec. 487; *State v. Moore*, 14 N. H. 451; *State v. Peckham*, 3 R. I. 289; *City v. Aherns*, 4 Strob. 241.

³⁷² *Downham v. Alexandria*, 10 Wall. 173, 19 L. ed. 929; *Beall v. State*, 4 Blackf. 107; *Lunt's Case*, 6 Me. 412. See, also, *Huntington v. Cheesbro*, 57 Ind. 74.

license.³⁷³ While, however, a state may prohibit sales altogether, if it merely attempts to restrict and regulate traffic in intoxicating liquors by imposing a license tax, such a tax must operate uniformly upon domestic and imported liquors.³⁷⁴ Accordingly, a statute imposing a license fee upon wholesale liquor dealers, whose products are manufactured without the state, and imposing no wholesaler's license on resident manufacturers, but a less onerous manufacturer's license, is void.³⁷⁵

A state law defining who are peddlers and imposing an annual tax upon all peddlers, without regard to the place where their wares are manufactured, is not void as imposing a burden upon importers.³⁷⁶ The test of the constitutionality of license laws relating to hawkers and peddlers is whether they discriminate in favor of domestic goods.³⁷⁷ The form which the discrimination takes is immaterial;³⁷⁸ if the effect is to discriminate, the law is void—e. g., a provision that as to foreign goods a license shall entitle the licensee to peddle only in the county where it is

³⁷³ *Pervear v. Commonwealth*, 5 Wall. 478, 18 L. ed. 608; *Commonwealth v. Owens*, 114 Mass. 252; *Daniels v. McCabe*, 3 Cliff. 117, Fed. Cas. No. 3567; *Boyd v. State*, 12 Lea, 689.

³⁷⁴ *Tiernan v. Rinker*, 102 U. S. 127, 26 L. ed. 103; *Walling v. Michigan*, 106 U. S. 454, 6 S. Ct. 454, 29 L. ed. 691; *State v. Stilsing*, 52 N. J. L. 517, 20 Atl. 65; *Sinclair v. State*, 69 N. C. 47.

³⁷⁵ *State v. Zaphy*, 14 S. Dak. 119, 86 Am. St. Rep. 741, 84 N. W. 391.

³⁷⁶ *Howe Machine Co. v. Gage*, 100 U. S. 679, 25 L. ed. 754; *Emert v. Missouri*, 156 U. S. 296, 15 S. Ct. 367, 39 L. ed. 430, affirming 103 Mo. 241, 23 Am. St. Rep. 874, 15 S. W. 81, 11 L. R. A. 219; *American Harrow Co. v. Shaffer*, 68 Fed. 755; *In re May*, 82 Fed. 425; *State v. Gorham*, 115 N. C. 727, 44 Am. St. Rep. 496, 20 S. E. 181, 25 L. R. A. 810; *State v. Richards*, 32 W. Va. 353, 9 S. E. 247, 3 L. R. A. 705; *The Stella Block v. Richland*, 26 La. Ann. 642; *Commonwealth v. Ober*, 12 Cush. 493; *State v. Smithson*, 106 Mo. 149, 17 S. W. 221; *Ex parte Robinson*, 12 Nev. 263, 28 Am. Rep. 794; *Wrought Iron Range Co. v. Carver*, 118 N. C. 328, 24 S. E. 352; *Morrill v. State*, 38 Wis. 428, 20 Am. Rep. 12; *Sears v. Warren County*, 36 Ind. 267, 10 Am. Rep. 62.

³⁷⁷ *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *In re Watson*, 15 Fed. 511; *Preston v. Finley*, 72 Fed. 855; *Vines v. State*, 67 Ala. 73; *Rodgers v. McCoy*, 6 Dak. 238, 44 N. W. 990; *State v. Browning*, 62 Mo. 591; *State v. Pratt*, 59 Vt. 590, 9 Atl. 556.

³⁷⁸ *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347.

taken out,³⁷⁹ restricting the right to licenses to residents,³⁸⁰ or requiring licenses only in cases of sales by nonresidents,³⁸¹ or sales of foreign goods,³⁸² imposing a higher tax upon nonresident peddlers.³⁸³

A distinction is drawn between license laws applying to hawkers and peddlers and those applying to commercial travelers or solicitors taking orders for goods to be shipped into the state,³⁸⁴ and the fact that a license law does not discriminate against commercial travelers or solicitors for nonresident dealers is immaterial; all such laws are void so far as they are applicable to sales or orders for goods to be shipped into the state.³⁸⁵ A statute imposing a license tax upon drummers, soliciting within

³⁷⁹ *Vines v. State*, 67 Ala. 73.

³⁸⁰ *Marshalltown v. Blum*, 58 Iowa, 184, 43 Am. Rep. 116, 12 N. W. 266.

³⁸¹ *Graffy v. Rushville*, 107 Ind. 502, 57 Am. Rep. 128, 8 N. E. 609; *Ex parte Bliss*, 63 N. H. 135.

³⁸² *State v. Furbush*, 72 Me. 493.

³⁸³ *Sayre Borough v. Phillips*, 148 Pa. St. 482, 33 Am. St. Rep. 842, 24 Atl. 76, 16 L. R. A. 49; *Commonwealth v. Myer*, 92 Va. 809, 23 S. E. 915, 31 L. R. A. 379.

³⁸⁴ *Emert v. Missouri*, 156 U. S. 311, 15 S. Ct. 367, 39 L. ed. 430, affirming 103 Mo. 241, 23 Am. St. Rep. 874, 15 S. W. 81, 11 L. R. A. 219; *Asher v. Texas*, 128 U. S. 132, 9 S. Ct. 1, 32 L. ed. 368; *Brennan v. Titusville*, 153 U. S. 302, 14 S. Ct. 289, 38 L. ed. 719, reversing 145 Pa. St. 504, 24 Am. St. Rep. 580, 22 Atl. 893.

³⁸⁵ *Asher v. Texas*, 128 U. S. 132, 9 S. Ct. 1, 32 L. ed. 368; *Stockard v. Morgan*, 185 U. S. 37, 22 S. Ct. 576, 46 L. ed. 785; *In re Kimmel*, 41 Fed. 775; *In re Houston*, 47 Fed. 539; *State v. Lagarde*, 60 Fed. 186; *In re Mitchell*, 62 Fed. 576; *Ex parte Hough*, 69 Fed. 330; *In re Tinsman*, 95 Fed. 560; *Ex parte Green*, 114 Fed. 959; *State v. Ager*, 83 Ala. 110, 3 South. 856; *Ex parte Murray*, 93 Ala. 78, 8 South. 868; *Bloomington v. Bourland*, 137 Ill. 534, 31 Am. St. Rep. 382, 27 N. E. 692; *McLaughlin v. South Bend*, 126 Ind. 471, 26 N. E. 185, 10 L. R. A. 357; *Martin v. Rosedale*, 130 Ind. 109, 29 N. E. 410; *Simmons Hardware Co. v. McGuire*, 39 La. Ann. 848, 2 South. 592; *Ex parte Rosenblatt*, 19 Nev. 439, 3 Am. St. Rep. 901, 14 Pac. 298; *State v. Bracco*, 103 N. C. 349, 9 S. E. 404; *State v. O'Connor*, 5 N. Dak. 629, 67 N. W. 824; *Talbutt v. State*, 39 Tex. Cr. 64, 73 Am. St. Rep. 903, 44 S. W. 1091; *Hurford v. State*, 91 Tenn. 699, 20 S. W. 201; *Adkins v. Richmond*, 98 Va. 91, 81 Am. St. Rep. 705, 34 S. E. 967, 47 L. R. A. 583. But see *In re Rudolph*, 2 Fed. 65; *Ex parte Hanson*, 28 Fed. 127; *Mock v. Commonwealth*, 6 Bush, 397; *Cole v. Randolph*,

a certain district, who do not represent regularly licensed houses, is void as to solicitors for foreign goods, although it purported to operate on all drummers alike;³⁸⁶ a fortiori, a statute discriminatory in character is void.³⁸⁷ The fact that goods for which orders are taken are at the time in a warehouse within the state, which is replenished from time to time by the nonresident principal, does not deprive the solicitor's business of its interstate character.³⁸⁸ So an agent engaged in distributing goods previously sold by sample is engaged in interstate commerce,³⁸⁹ but the incorporation of goods with the mass of property in the state deprives them of their character as subjects of interstate commerce,³⁹⁰ and where one takes orders which he submits to a nonresident manufacturer in his own name, who ships the goods to the solicitor in a single package, which is broken by him, the latter sells as owner and not as agent.³⁹¹ The occupation of a resident engaged in a general business is subject to a license tax, notwithstanding the business consists in negotiating sales for nonresidents.³⁹²

Brokers dealing in money and exchange are subject to a license

31 La. Ann. 535; *State v. Long*, 95 N. C. 582, 59 Am. Rep. 263; *Ex parte Asher*, 23 Tex. App. 662, 59 Am. Rep. 783, 5 S. W. 91; *Speer v. Commonwealth*, 23 Gratt. 935, 14 Am. Rep. 164.

³⁸⁶ *Robbins v. Shelby County Tax. Dist.*, 120 U. S. 479, 7 S. Ct. 592, 30 L. ed. 694.

³⁸⁷ *Corson v. Maryland*, 120 U. S. 505, 7 S. Ct. 655, 30 L. ed. 699; *Ex parte Thornton*, 12 Fed. 538; *In re Hennick*, 5 Mackey, 489; *Commonwealth v. Smith*, 6 Bush, 303.

³⁸⁸ *In re Nichols*, 48 Fed. 164; *In re Tyerman*, 48 Fed. 167. But contra, *Haynes v. Briggs*, 41 Fed. 468, as to goods previously shipped in and stored to be sold by agents.

³⁸⁹ *Huntington v. Mahan*, 142 Ind. 695, 51 Am. St. Rep. 200, 42 N. E. 463; *State v. Willingham*, 9 Wyo. 290, 87 Am. St. Rep. 948, 62 Pac. 797, 52 L. R. A. 198.

³⁹⁰ *In re Wilson*, 19 D. C. 341, 12 L. R. A. 624; *State v. Montgomery*, 94 Me. 192, 80 Am. St. Rep. 165, 47 Atl. 165.

³⁹¹ *Croy v. Obion County*, 104 Tenn. 525, 78 Am. St. Rep. 931, 51 L. R. A. 254; *State v. Gorham*, 115 N. C. 721, 44 Am. St. Rep. 494, 20 S. E. 179, 25 L. R. A. 810.

³⁹² *Ficklen v. Shelby County*, 145 U. S. 21, 12 S. Ct. 810, 36 L. ed. 601.

tax; such a tax is not a burden on commerce,³⁹³ but a tax upon brokers who sell goods by sample for nonresidents is within the rule as to drummers and solicitors.³⁹⁴ The business of soliciting passenger travel over interstate roads is interstate commerce, and it cannot be burdened by a license tax;³⁹⁵ but a state may protect its industries by discouraging the business of soliciting laborers to leave the state and a license tax imposed upon emigrant brokers does not contravene the commerce power.³⁹⁶

A state may admit foreign corporations to do business within its borders upon any conditions it sees fit to impose, or it may exclude them entirely,³⁹⁷ and in prescribing such conditions it may discriminate in favor of its own corporations.³⁹⁸ The only restriction upon the state's power in this matter is in respect to corporations engaged in federal business or interstate com-

³⁹³ *Nathan v. Louisiana*, 8 How. 81, 12 L. ed. 992, affirming 12 Rob. 32.

³⁹⁴ *In re Rozelle*, 57 Fed. 155; *Stratford v. Montgomery*, 110 Ala. 619, 20 South. 127; *People v. Moring*, 3 Abb. Dec. 539.

³⁹⁵ *McCall v. California*, 136 U. S. 109, 10 S. Ct. 881, 34 L. ed. 391.

³⁹⁶ *Williams v. Fears*, 179 U. S. 278, 21 S. Ct. 128, 45 L. ed. 186; *Sheppard v. Sumter County Commissioners*, 59 Ga. 535; but see *Joseph v. Randolph*, 71 Ala. 499, 46 Am. Rep. 347.

³⁹⁷ *Bank of Augusta v. Earle*, 13 Pet. 591, 10 L. ed. 274; *Lafayette Ins. Co. v. French*, 18 How. 407, 15 L. ed. 451; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Doyle v. Continental Ins. Co.*, 94 U. S. 540, 24 L. ed. 148; *St. Clair v. Cox*, 106 U. S. 356, 1 S. Ct. 354, 27 L. ed. 222; *Fritts v. Palmer*, 132 U. S. 288, 10 S. Ct. 93, 33 L. ed. 317; *Horn Silver Min. Co. v. New York*, 163 U. S. 314, 12 S. Ct. 403, 36 L. ed. 164; *Ashley v. Ryan*, 153 U. S. 441, 14 S. Ct. 865, 38 L. ed. 773; *Orient Ins. Co. v. Daggs*, 172 U. S. 566, 19 S. Ct. 281, 43 L. ed. 552, affirming 136 Mo. 391, 58 Am. St. Rep. 641, 38 S. W. 86, 35 L. R. A. 227; *Dayton Coal Co. v. Barton*, 183 U. S. 24, 22 S. Ct. 5, 46 L. ed. 61; *Williams v. Gaylord*, 186 U. S. 168, 46 L. ed. 1102.

³⁹⁸ *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Blake v. McClung*, 172 U. S. 256, 19 S. Ct. 172, 43 L. ed. 432; *Philadelphia etc. Co. v. New York*, 119 U. S. 118, 7 S. Ct. 112, 30 L. ed. 342; *Manchester Fire Ins. Co. v. Harriott*, 91 Fed. 718; *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 188, 8 S. Ct. 740, 31 L. ed. 650; *Southern etc. Assn. v. Norman*, 98 Ky. 304, 56 Am. St. Rep. 373, 32 S. W. 954, 31 L. R. A. 41; *Hartford Ins. Co. v. Raymond*, 70 Mich. 502, 38 N. W. 474.

merce;³⁹⁹ a state cannot impose limitations upon the right to engage in interstate commerce.⁴⁰⁰ That the restriction assumes the guise of a license tax is immaterial;⁴⁰¹ the state cannot declare that the right to engage in the business of interstate commerce is a privilege, and impose a license tax for the exercise of the privilege,⁴⁰² and the fact that a company, as incidental to its main business of transporting goods between states, does some local business, does not warrant the imposition of a license tax upon its entire business.⁴⁰³ A privilege tax upon sleeping-cars is void as applied to cars used in interstate transportation,⁴⁰⁴ and a municipal license tax imposed upon persons engaged in towing and lightering is a burden upon interstate commerce, and so void;⁴⁰⁵ but a municipal license imposed upon a

³⁹⁹ *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 188, 8 S. Ct. 840, 31 L. ed. 650; *Horn Silver Min. Co. v. New York*, 143 U. S. 314, 12 S. Ct. 403, 36 L. ed. 164; *Waters etc. Oil Co. v. Texas*, 177 U. S. 45, 20 S. Ct. 518, 44 L. ed. 657; *Norfolk etc. Ry. v. Pennsylvania*, 136 U. S. 118, 10 S. Ct. 960, 34 L. ed. 394; *Ryer v. Odd Fellows' etc. Assn.*, 157 Mass. 373, 34 Am. St. Rep. 293, 32 N. E. 472.

⁴⁰⁰ *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 734, 5 S. Ct. 739, 28 L. ed. 1137; *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 185, 8 S. Ct. 841, 31 L. ed. 650; *Mershon v. Pottsville Lumber Co.*, 187 Pa. St. 12, 67 Am. St. Rep. 560, 40 Atl. 1019.

⁴⁰¹ *Smith v. Alabama*, 124 U. S. 474, 8 S. Ct. 564, 31 L. R. A. 508; *Norfolk etc. Ry. v. Pennsylvania*, 136 U. S. 118, 10 S. Ct. 960, 34 L. ed. 394; *Crutcher v. Kentucky*, 141 U. S. 56, 11 S. Ct. 851, 35 L. ed. 649.

⁴⁰² *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 1, 24 L. ed. 708; *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727, 5 S. Ct. 739, 28 L. ed. 1137; *Western Union Tel. Co. v. Massachusetts*, 125 U. S. 530, 8 S. Ct. 961, 31 L. ed. 790; *Leloup v. Mobile*, 127 U. S. 640, 8 S. Ct. 1380, 32 L. ed. 311; reversing 76 Ala. 401; *St. Clair County v. Interstate etc. Co.*, 109 Fed. 741.

⁴⁰³ *Crutcher v. Kentucky*, 141 U. S. 56, 11 S. Ct. 851, 35 L. ed. 649; *Commonwealth v. Smith*, 92 Ky. 43, 36 Am. St. Rep. 581, 17 S. W. 188; *Woessner v. Cottam*, 19 Tex. Civ. App. 615, 47 S. W. 680; but see *Osborn v. Mobile*, 16 Wall. 482, 21 L. ed. 470.

⁴⁰⁴ *Pickard v. Pullman Car Co.*, 117 U. S. 51, 6 S. Ct. 635, 29 L. ed. 785; *Tennessee v. Pullman etc. Car Co.*, 117 U. S. 52, 6 S. Ct. 643, 29 L. ed. 785; *Pullman etc. Car Co. v. Nolan*, 22 Fed. 276.

⁴⁰⁵ *Moran v. New Orleans*, 112 U. S. 74, 5 S. Ct. 38, 28 L. ed. 653; *Harman v. Chicago*, 147 U. S. 407, 13 S. Ct. 306, 37 L. ed. 216, reversing 140 Ill. 374, 29 N. E. 732; *St. Louis v. Consolidated Coal*

public exhibition given on board a coasting vessel is not a regulation of commerce, but a mere police regulation.⁴⁰⁶ A license fee imposed upon corporations for business done exclusively within a state is valid,⁴⁰⁷ and the fact that telegraphic messages transmitted between points in the same state traverse another state en route does not give them an interstate commerce character.⁴⁰⁸ The business of insurance is not interstate commerce, and the restrictions of this clause cannot apply to licenses imposed on foreign insurance companies.⁴⁰⁹

— Traffic in Original Packages.

The right to import carries with it the right to sell the package or bale imported, and a state cannot impose a tax upon goods so sold;⁴¹⁰ but the protection of the commerce clause ceases when the importer has so acted upon the thing imported that it has been incorporated with the mass of property in the state.⁴¹¹

Co., 158 Mo. 342, 81 Am. St. Rep. 216, 59 S. W. 103; but see *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 373, 2 S. Ct. 257, 27 L. ed. 419; *Lightburne v. Taxing Dist.*, 4 Lea, 219.

⁴⁰⁶ *Board of Selectmen v. Spalding*, 8 La. Ann. 87.

⁴⁰⁷ *Osborne v. Florida*, 164 U. S. 656, 17 S. Ct. 214, 41 L. ed. 586; *Western Union Tel. Co. v. Fremont*, 43 Neb. 499, 61 N. W. 724, 26 L. R. A. 706; *Postal Tel. Co. v. Richmond*, 99 Va. 102, 86 Am. St. Rep. 877, 37 S. E. 789.

⁴⁰⁸ *Leavell v. Western Union Tel. Co.*, 116 N. C. 211, 47 Am. St. Rep. 798, 21 S. E. 391, 27 L. R. A. 843.

⁴⁰⁹ *Paul v. Virginia*, 8 Wall. 183, 19 L. ed. 357; *Liverpool etc. Ins. Co. v. Massachusetts*, 10 Wall. 573, 19 L. ed. 1029; *Hooper v. California*, 155 U. S. 653, 15 S. Ct. 209, 39 L. ed. 297; *Insurance Co. v. Commonwealth*, 87 Pa. St. 183, 30 Am. Rep. 356; *State v. Phipps*, 50 Kan. 69, 34 Am. St. Rep. 152, 31 Pac. 1097, 18 L. R. A. 657.

⁴¹⁰ *Low v. Austin*, 13 Wall. 33, 20 L. ed. 517; *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678; *Cook v. Pennsylvania*, 97 U. S. 573, 24 L. ed. 1015.

⁴¹¹ *Brown v. Maryland*, 12 Wheat. 441, 6 L. ed. 678; *Low v. Austin*, 13 Wall. 33, 20 L. ed. 517; *Brown v. Houston*, 114 U. S. 634, 5 S. Ct. 1091, 29 L. ed. 257; *May v. New Orleans*, 178 U. S. 507, 20 S. Ct. 976, 44 L. ed. 1165; *Austin v. Tennessee*, 179 U. S. 355, 21 S. Ct. 132, 45 L. ed. 224; *State v. Blackwell*, 65 Me. 588; *State v. Montgomery*, 94 Me. 192, 80 Am. St. Rep. 165, 47 Atl. 165; *Myers v. Baltimore County*, 83 Md. 389, 55 Am. St. Rep. 352, 35 Atl. 145, 34 L. R. A. 309; *State v. Parsons*, 124 Mo. 436, 46 Am. St. Rep. 457, 27 S. W. 1102.

An "original package" is the box, case, or bale in which goods are shipped, and the term does not include the smaller parcels contained therein;⁴¹² the unit in which the carrier receives, transports and delivers as an article of commerce the identical package delivered to it at the initial point of shipment in the exact condition in which it was shipped.⁴¹³ An uncovered basket in which small packages of cigarettes are shipped is to be deemed the "original package."⁴¹⁴ A package devised by a non-resident manufacturer, adapted for sale at retail to individual consumers, and in which the article is sold to such consumers, is not an "original package."⁴¹⁵ What constitutes an "original package" is ultimately a question for the federal courts,⁴¹⁶ and the determination of the internal revenue officers upon that point is not conclusive.⁴¹⁷ Goods stored by the importer in the original package are not subject to a state tax until the package is broken or the goods sold.⁴¹⁸

Commerce with Indians.

Under the commerce clause Congress has exclusive and unfettered power to regulate commerce with the Indian tribes, and its existence implies the right to exercise it whenever there is a subject to act upon;⁴¹⁹ and this power extends to the regulation

⁴¹² *May v. New Orleans*, 178 U. S. 510, 20 S. Ct. 976, 44 L. ed. 1165; *Austin v. Tennessee*, 179 U. S. 354, 21 S. Ct. 132, 45 L. ed. 224, affirming 101 Tenn. 563, 70 Am. St. Rep. 703, 48 S. W. 305, 50 L. R. A. 478.

⁴¹³ *McGregor v. Cone*, 104 Iowa, 465, 65 Am. St. Rep. 522, 73 N. W. 1041, 39 L. R. A. 484; *Haley v. State*, 42 Neb. 566, 47 Am. St. Rep. 718, 60 N. W. 962.

⁴¹⁴ *Austin v. State*, 101 Tenn. 563, 70 Am. St. Rep. 703, 48 S. W. 305, 50 L. R. A. 478.

⁴¹⁵ *Commonwealth v. Paul*, 170 Pa. St. 284, 50 Am. St. Rep. 776, 33 Atl. 82, 30 L. R. A. 396.

⁴¹⁶ *State v. Goetze*, 43 W. Va. 495, 64 Am. St. Rep. 871, 27 S. E. 225.

⁴¹⁷ *McGregor v. Cone*, 104 Iowa, 465, 65 Am. St. Rep. 522, 73 N. W. 1041, 39 L. R. A. 484.

⁴¹⁸ *State v. Board of Assessors*, 46 La. Ann. 145, 49 Am. St. Rep. 318, 15 South. 10.

⁴¹⁹ *United States v. Forty-three Gallons of Whisky*, 93 U. S. 194, 23 L. ed. 846; *United States v. Martin*, 8 Saw. 478, 14 Fed. 840.

of all traffic and commercial intercourse, even when the tribe is located wholly within the limits of a single state,⁴²⁰ except under a license.^{420a} The whole subject of intercourse with Indian tribes is vested in the United States,⁴²¹ and Congress may prohibit traffic in liquors with the tribes,⁴²² and may prohibit the introduction of spirituous liquors to a place near a reservation, although within state lines.⁴²³ But the power to enact purely criminal laws for Indian tribes does not arise from the commerce clause; it arises from the necessity to protect the tribes and because it is elsewhere nonexistent.⁴²⁴ Where reservations are within the territory of a state, such laws apply only to offenses committed by Indians on the reservation.⁴²⁵ Where, however, the reservation is not within the limits of a state, Congress may provide for punishment of crimes committed either by Indians or whites.⁴²⁶ The commerce contemplated by this clause cannot comprehend ordinary business transactions between individuals,⁴²⁷ or individual sales of land;⁴²⁸ nor can the laws of Congress invalidate a contract between an Indian and a white man within the limits of a state,⁴²⁹ and in the absence of any federal statute or treaty to the contrary, a state court

⁴²⁰ *United States v. Holliday*, 3 Wall. 417, 18 L. ed. 182.

^{420a} *United States v. Cisna*, 1 McLean, 254, Fed. Cas. No. 14,795.

⁴²¹ *Worcester v. Georgia*, 6 Pet. 557, 8 L. ed. 483.

⁴²² *United States v. Shaw-Mux*, 2 Saw. 365, Fed. Cas. No. 16,268; *United States v. Tom*, 1 Or. 26.

⁴²³ *United States v. Forty-three Gallons of Whisky*, 93 U. S. 196-198, 23 L. ed. 848.

⁴²⁴ *United States v. Kagama*, 118 U. S. 378, 383, 6 S. Ct. 1109, 30 L. ed. 228; *In re Wilson*, 140 U. S. 577, 11 S. Ct. 870, 35 L. ed. 513.

⁴²⁵ *United States v. Thomas*, 151 U. S. 585, 14 S. Ct. 426, 38 L. ed. 276; *United States v. McBratney*, 104 U. S. 623, 26 L. ed. 869; *State v. Campbell*, 53 Minn. 358, 55 N. W. 555, 21 L. R. A. 169.

⁴²⁶ *United States v. Rogers*, 4 How. 572, 11 L. ed. 1105; *Ex parte Crow Dog*, 109 U. S. 560, 3 S. Ct. 398, 27 L. ed. 1030; *United States v. Cha-to-kah-na-he-sha*, Hemp. 27, Fed. Cas. No. 14,789a; *United States v. Ewing*, 47 Fed. 812; *United States v. Monte*, 3 N. Mex. 125, 3 Pac. 47.

⁴²⁷ *Hicks v. Euhartollah*, 21 Ark. 106.

⁴²⁸ *Murray v. Wooden*, 17 Wend. 531.

⁴²⁹ *Hicks v. Euhartollah*, 21 Ark. 106; *Taylor v. Drew*, 21 Ark. 485.

may take jurisdiction of an action on contract in favor of a white man against an Indian.⁴³⁰ Indians do not submit themselves to all the laws of a state merely because they seek its courts for the preservation of rights or the redress of wrongs.⁴³¹ An Indian may sue in a state court to enforce his right to the enjoyment of his property,⁴³² may sue in equity to restrain a trespass,⁴³³ and where an Indian died before state laws were extended over the reservation, a state court granted letters of administration upon his estate after they were so extended.⁴³⁴

— Status of Indians and Indian Tribes.

An Indian is not a foreign citizen or subject,⁴³⁵ but may be a resident alien in a state.⁴³⁶ In all intercourse with foreign nations as to commerce, Indians are considered as within the jurisdictional limits of the United States.⁴³⁷ While an Indian tribe is an alien body,⁴³⁸ it is not an independent sovereignty,⁴³⁹ but an autonomous body subject to the paramount authority of the United States,⁴⁴⁰ and in a state of pupilage.⁴⁴¹ Indians on a reservation within a state are not citizens or mem-

⁴³⁰ *Stokes v. Rodman*, 5 R. I. 405; *Stacy v. La Belle*, 99 Wis. 520, 67 Am. St. Rep. 879, 75 N. W. 60, 41 L. R. A. 419; *Jones v. Eisler*, 3 Kan. 134; *Murch v. Tomer*, 21 Me. 535; *Rubideaux v. Vallie*, 12 Kan. 28.

⁴³¹ *The Kansas Indians*, 5 Wall. 758, 18 L. ed. 667.

⁴³² *Lobdell v. Hall*, 3 Nev. 507.

⁴³³ *Strong v. Waterman*, 11 Paige, 607.

⁴³⁴ *Brashear v. Williams*, 10 Ala. 630; but see *Dole v. Irish*, 2 Barb. 639; *United States v. Shanks*, 15 Minn. 369.

⁴³⁵ *Karrahoo v. Adams*, 1 Dill. 344, Fed. Cas. No. 7614.

⁴³⁶ *Parent v. Walmsley*, 20 Ind. 82.

⁴³⁷ *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483; *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. ed. 25; *Mackey v. Cox*, 18 How. 100, 15 L. ed. 299; *The Kansas Indians*, 5 Wall. 737, 18 L. ed. 667; *United States v. Tobacco Fact.*, 1 Dill. 265, Fed. Cas. No. 16,528.

⁴³⁸ *Elk v. Wilkins*, 112 U. S. 102, 5 S. Ct. 41, 28 L. ed. 643.

⁴³⁹ *Cherokee Nation v. Kansas Ry.*, 135 U. S. 653, 10 S. Ct. 965, 34 L. ed. 295.

⁴⁴⁰ *Talton v. Mayes*, 163 U. S. 380, 16 S. Ct. 986, 41 L. ed. 196; *Roff v. Burney*, 168 U. S. 221, 18 S. Ct. 60, 42 L. ed. 442; *Stephens v. Cherokee Nation*, 174 U. S. 486, 19 S. Ct. 722, 43 L. ed. 1041.

⁴⁴¹ *Jones v. Meehan*, 175 U. S. 1, 20 S. Ct. 1, 44 L. ed. 49.

bers of the body politic, but are considered as independent tribes governed by their own usages and chiefs;⁴⁴² and if an Indian leaves his tribe to take up his abode among white people, he is entitled to all the rights and privileges belonging to an emigrant from any foreign people.⁴⁴³ State laws can have no force in a reservation within state territory, and citizens of the state have no right to enter except with the consent of the tribe and in conformity with treaties and acts of Congress,⁴⁴⁴ and the rights of a tribe as against state laws can only be changed by treaty stipulations or an abandonment of their tribal organization.⁴⁴⁵ The recognition of Indians as tribes is a matter for the political department of the government and its decision is binding on the courts.⁴⁴⁶

The tribes contemplated by the commerce clause are those which are in a condition to determine for themselves with whom they will have commerce,⁴⁴⁷ and when the Indian lands are within the boundaries of a state, Congress is limited to the regulation of commerce with such tribes as exist as a distinct community.⁴⁴⁸ This clause gives to Congress power to regulate com-

⁴⁴² *Holden v. Joy*, 17 Wall. 242, 21 L. ed. 523; *Goodell v. Jackson*, 20 Johns. 693, 11 Am. Dec. 351; *Jackson v. Wood*, 7 Johns. 290; *Strong v. Waterman*, 11 Paige, 607.

⁴⁴³ *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691.

⁴⁴⁴ *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483; *United States v. Cisma*, 1 McLean, 254, Fed. Cas. No. 14,795; *McKay v. Campbell*, 2 Saw. 133, Fed. Cas. No. 8840; *Blair v. Pathkiller*, 2 Yerg. 407.

⁴⁴⁵ *The Kansas Indians*, 5 Wall. 755, 757, 18 L. ed. 667; *Mungosah v. Steinbrook*, 3 Dill. 419, Fed. Cas. No. 9924; *United States v. Payne*, 4 Dill. 389, Fed. Cas. No. 16,014; *United States v. Boyd*, 68 Fed. 582; *Compo v. Jackson Iron Co.*, 50 Mich. 583, 16 N. W. 300; *Earl v. Godley*, 42 Minn. 362, 18 Am. St. Rep. 578, 44 N. W. 255, 7 L. R. A. 125; *In re Narragansett Indians*, 20 B. I. 771, 40 Atl. 368.

⁴⁴⁶ *Holden v. Joy*, 17 Wall. 242, 21 L. ed. 523; *United States v. Holliday*, 3 Wall. 419, 18 L. ed. 182; *The Kansas Indians*, 5 Wall. 737, 18 L. ed. 667; *Territory v. Cox*, 6 Dak. 521; *Me-shing-go-me-sia v. State*, 36 Ind. 316.

⁴⁴⁷ *Moor v. Veazie*, 32 Me. 343, 52 Am. Dec. 655.

⁴⁴⁸ *United States v. Bailey*, 1 McLean, 234, Fed. Cas. No. 14,495; *United States v. Cisma*, 1 McLean, 254, Fed. Cas. No. 14,795; *State v. Foreman*, 8 Yerg. 256.

merce between different tribes and between different Indians,⁴⁴⁹ and to regulate commerce between different tribes as well without as within the Indian country.⁴⁵⁰ The power of Congress does not necessarily cease upon their being included within state limits;⁴⁵¹ but where the Indians occupy territory of very limited extent, surrounded by white people, necessarily having daily intercourse with the Indians, and it becomes impracticable to enforce the law, the federal power must cease.⁴⁵² An Indian tribe cannot by treaty stipulate away any part of the sovereignty of a state guaranteed to it upon its admission to the Union.⁴⁵³ "Indian country" includes all within the United States to which Indian title has not been extinguished, excepting territory not exempted from state jurisdiction at the time of admission; but even as to territory so exempted, Congress retains its power under the commerce clause.⁴⁵⁴ A tribal Indian, although off the reservation, is a ward of the government.⁴⁵⁵

— Indian Laws and Customs.

So long as Indians adhere to their tribal customs and their affairs are managed by government officers, they are not subject to state laws,⁴⁵⁶ and may regulate their own civil policy, their property contracts, domestic relations and inheritance.⁴⁵⁷ Not-

⁴⁴⁹ *United States v. Holliday*, 3 Wall. 415, 18 L. ed. 182; *United States v. Shaw-Mux*, 2 Saw. 364, Fed. Cas. No. 16,268.

⁴⁵⁰ *United States v. Holliday*, 3 Wall. 415, 416, 18 L. ed. 182; *United States v. Cisna*, 1 McLean, 254, Fed. Cas. No. 14,795; *United States v. Seveloff*, 2 Saw. 317, Fed. Cas. No. 16,252.

⁴⁵¹ *The Kansas Indians*, 5 Wall. 754, 757, 18 L. ed. 667.

⁴⁵² *United States v. Cisna*, 1 McLean, 254.

⁴⁵³ *United States v. Forty-three Gallons of Whisky*, 93 U. S. 188, 23 L. ed. 846.

⁴⁵⁴ *Ex parte Crow Dog*, 109 U. S. 561, 3 S. Ct. 396, 27 L. ed. 1030.

⁴⁵⁵ *United States v. Miller*, 105 Fed. 944.

⁴⁵⁶ *United States v. Boyd*, 83 Fed. 554; *State v. McKenney*, 18 Nev. 203, 2 Pac. 182; *Boyer v. Dively*, 58 Mo. 510; *Morgan v. McGhee*, 5 Humph. 13; *Wall v. Williams*, 11 Ala. 826.

⁴⁵⁷ *Mackey v. Coxe*, 18 How. 103, 15 L. ed. 299; *Gray v. Coffman*, 8 Dill. 401, Fed. Cas. No. 5714; *United States v. Paine*, 4 Dill. 389, Fed. Cas. No. 16,014; *Boyer v. Dively*, 58 Mo. 510; *Dole v. Irish*, 2 Barb. 639; *Goodell v. Jackson*, 20 Johns. 693, 11 Am. Dec. 351; *Morgan v. McGhee*, 5 Humph. 13; *Jones v. Laney*, 2 Tex. 342.

withstanding the reservation is within state limits.⁴⁵⁸ In the management of their internal concerns tribal Indians are dependent upon no power.⁴⁵⁹ A marriage between Indians according to the usages of the tribe will be recognized everywhere,⁴⁶⁰ and the right of dissolution, of which either party may take advantage, will be deemed a term of the contract;⁴⁶¹ but a marriage between Indians in a state after the tribe has removed therefrom must conform to the state laws,⁴⁶² and a marriage between a white man and an Indian woman according to the tribal customs, if prohibited by state laws, must be held void, although performed on a reservation.⁴⁶³ The liability of an innkeeper on a reservation is to be determined by tribal laws.⁴⁶⁴ In the absence of proof, it will be presumed that in a savage tribe there are no laws regulating descents, and that property belongs to the first occupant.⁴⁶⁵ A tribe may adopt a white person or others, and after adoption such person is subject to all the burdens and entitled to all the immunities of a native born.⁴⁶⁶

The construction of statutes of an Indian nation is solely within the jurisdiction of the courts of that nation;⁴⁶⁷ but where an offense is cognizable under federal laws, the tribal courts can have no jurisdiction.⁴⁶⁸ The Cherokee territory is

⁴⁵⁸ *Wall v. Williams*, 11 Ala. 826; *Goodell v. Jackson*, 20 Johns. 693, 11 Am. Dec. 351.

⁴⁵⁹ *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483.

⁴⁶⁰ *Wall v. Williams*, 11 Ala. 826; *Earl v. Godley*, 42 Minn. 361, 18 Am. St. Rep. 517, 44 N. W. 255, 7 L. R. A. 125; *Johnson v. Johnson*, 30 Mo. 72; *Boyer v. Dively*, 58 Mo. 510; *Morgan v. McGhee*, 5 Humph. 13.

⁴⁶¹ *Wall v. Williams*, 11 Ala. 826.

⁴⁶² *Roche v. Washington*, 19 Ind. 53, 81 Am. Dec. 376.

⁴⁶³ *In re Wilbur's Estate*, 8 Wash. 35, 40 Am. St. Rep. 886, 35 Pac. 407.

⁴⁶⁴ *Horland v. Pack, Peck* (Tenn.), 151.

⁴⁶⁵ *Brashear v. Williams*, 10 Ala. 630.

⁴⁶⁶ *Nofire v. United States*, 164 U. S. 662, 17 S. Ct. 212, 41 L. ed. 588; *United States v. Ragsdale, Hemp*. 497, Fed. Cas. No. 16,113; *Raymond v. Raymond*, 83 Fed. 723.

⁴⁶⁷ *Talton v. Mayes*, 163 U. S. 385, 16 S. Ct. 986, 41 L. ed. 196; *Nordstrom v. Washington*, 164 U. S. 705, 17 S. Ct. 997, 41 L. ed. 1183.

⁴⁶⁸ *United States v. Ragsdale, Hemp*. 497, Fed. Cas. No. 16,113.

a domestic territory, and its laws and proceedings stand on the same footing as those of other territories.⁴⁶⁹

⁴⁶⁹ *Mackey v. Coxe*, 18 How. 103, 15 L. ed. 299; *The Cherokee Tobacco*, 11 Wall. 619, 20 L. ed. 227; affirming 1 Dill. 265, Fed. Cas. No. 16,528.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

Naturalization—Nature of Proceeding.

Naturalization is the act of adopting a foreigner and clothing him with the privileges of a native citizen;¹ it is a judicial proceeding submitted to courts of record, and their judgments thereon are conclusive.² Submission to a court of record is essential,³ and a court of record without a clerk has no jurisdiction to proceed.⁴ The oath prescribed by the naturalization act, when taken, confers citizenship, and an order of court admitting the applicant is necessary.⁵

— Persons Entitled to Naturalization.

The power granted in this clause is confined to the removal of disabilities of foreign birth,⁶ and does not apply to a free white person born in this country of foreign parents,⁷ nor to a freeman of color born in the United States.⁸ When the constitution was adopted, African negroes, whether emancipated or not, were deemed to have no rights or privileges except what the

¹ *Osborne v. Bank of United States*, 9 Wheat. 827, 6 L. ed. 204; *Boyd v. Nebraska*, 143 U. S. 162, 12 S. Ct. 375, 36 L. ed. 103.

² *Spratt v. Spratt*, 4 Pet. 408, 7 L. ed. 897; *The Acorn*, 2 Abb. 444, Fed. Cas. No. 21; *Scott v. Strobach*, 49 Ala. 488; *Ex parte Knowles*, 5 Cal. 301; *People v. McGowan*, 77 Ill. 647, 20 Am. Rep. 255; *Andres v. Arnold*, 77 Mich. 88, 43 N. W. 858, 6 L. E. A. 238; *State v. Macdonald*, 24 Minn. 59; *McCarthy v. Marsh*, 5 N. Y. 284; *Commonwealth v. Towles*, 5 Leigh, 746; *State v. Hoesfinger*, 35 Wis. 400.

³ *United States v. Makins*, 26 Fed. Cas. 1114; *Green v. Salas*, 31 Fed. 107.

⁴ *Ex parte Cregg*, 2 Curt. 100, Fed. Cas. No. 3380; *Dean, Petitioner*, 83 Me. 498, 22 Atl. 387, 13 L. R. A. 229; *State v. Whittemore*, 50 N. H. 251, 9 Am. Rep. 203.

⁵ *Campbell v. Gordon*, 6 Cr. 182, 3 L. ed. 190.

⁶ *Dred Scott v. Sandford*, 19 How. 417, 420, 578, 15 L. ed. 691; *United States v. Rhodes*, 1 Abb. 45, Fed. Cas. No. 16,151; *Lynch v. Clarke*, 1 Sand. Ch. 583.

⁷ *Citizenship*, 9 Opin. Atty. Gen. 374.

⁸ *Dred Scott v. Sandford*, 19 How. 420, 15 L. ed. 691; *Smith v. Moody*, 26 Ind. 299.

dominant race chose to grant them; under the constitution, as originally adopted, Congress could not naturalize native or foreign negroes,⁹ but the Fourteenth Amendment gave negroes all the privileges of citizenship.¹⁰ Chinese persons not born in the United States have never been recognized as citizens nor authorized to become naturalized.¹¹ Indians may be naturalized by authority of Congress, like the subjects of any foreign government;¹² in fact, naturalization of a member of an existing tribe is a prerequisite to United States citizenship.¹³ While Congress may prescribe general laws for naturalization, it has also power to naturalize a class collectively by treaty or statute.¹⁴ The treaty of Washington conferred the elective franchise upon British subjects resident in the disputed territory at the time of its adoption.¹⁵

— Power to Naturalize.

The constitution vests the power of naturalization exclusively in Congress.¹⁶ While a state may confer upon individuals the

⁹ *Dred Scott v. Sandford*, 19 How. 412-420, 15 L. ed. 691.

¹⁰ *Strauder v. West Virginia*, 100 U. S. 307, 25 L. ed. 664.

¹¹ *Fong Yue Ting v. United States*, 149 U. S. 716, 13 S. Ct. 1016, 37 L. ed. 905.

¹² *Dred Scott v. Sandford*, 19 How. 404, 15 L. ed. 691.

¹³ *Elk v. Wilkins*, 112 U. S. 101, 5 S. Ct. 45, 28 L. ed. 643; *Paul v. Chilsoquie*, 70 Fed. 402.

¹⁴ *Boyd v. Nebraska*, 143 U. S. 162, 12 S. Ct. 375, 36 L. ed. 103; *In re Rodriguez*, 81 Fed. 350, 351; *People v. Washington*, 36 Cal. 658.

¹⁵ *Opinion Atty. Gen.*, 68 Me. 589.

¹⁶ *Chirac v. Chirac*, 2 Wheat. 269, 4 L. ed. 234; *United States v. Villato*, 2 Dall. 372, Fed. Cas. No. 16,622; *Houston v. Moore*, 5 Wheat. 48, 5 L. ed. 19; *Ogden v. Saunders*, 12 Wheat. 277, 6 L. ed. 606; *Passenger Cases*, 7 How. 556, 12 L. ed. 702; *Dred Scott v. Sandford*, 19 How. 417, 15 L. ed. 691; *Elk v. Wilkins*, 112 U. S. 109, 58 S. Ct. 49, 28 L. ed. 643; *Boyd v. Nebraska*, 143 U. S. 158-160, 12 S. Ct. 375, 36 L. ed. 103; *United States v. Wong Kim Ark*, 169 U. S. 701, 18 S. Ct. 477, 42 L. ed. 890; *United States v. Rhodes*, 1 Abb. 45, Fed. Cas. No. 16,151; *Matthew v. Rae*, 3 Cr. C. C. 699, Fed. Cas. No. 9281; *Golden v. Prince*, 3 Wash. C. C. 313, Fed. Cas. No. 5509; *Comitis v. Parkerson*, 56 Fed. 558, 22 L. B. A. 148; *Ex parte Knowles*, 5 Cal. 300; *North Carolina v. Manuel*, 2 Dev. & B. 25; *North Carolina v. Newsom*, 5 Ired. 253; *Lynch v. Clarke*, 1 Sand. Ch. 583; *Stephens, Petitioner*, 4 Gray, 561; *Commonwealth v. Ives*, 18 Pick. 193.

rights of citizens within its own borders, it cannot invest them with the character or rights of United States citizens;¹⁷ the rights so conferred are restricted to the state which gave them;¹⁸ but notwithstanding the rights of citizenship under the state and federal governments differ,¹⁹ a citizen of the United States is a citizen of the state where he resides.²⁰ The object of investing Congress with this power was to guard against a too narrow mode of conferring rights of citizenship,²¹ and it was sought to provide a rule for the action of the states and not for that of the federal government.²² A state cannot superadd any conditions to the acquisition of the rights of citizenship;²³ but while Congress may deprive a person of the opportunity to enjoy a right belonging to him as a citizen of a state, it cannot deprive him of the right itself.²⁴

Congress may determine the class of courts which may be invested with jurisdiction in naturalization proceedings,²⁵ and no state can confer jurisdiction on any tribunal which does not come within the terms of the act of Congress.²⁶ But a state may prohibit its courts from entertaining naturalization proceed-

¹⁷ *Dred Scott v. Sandford*, 19 How. 405-422, 15 L. ed. 691; *Boyd v. Nebraska*, 143 U. S. 158-160, 12 S. Ct. 375, 36 L. ed. 103; *Minneapolis v. Reum*, 56 Fed. 581; *Lanz v. Randall*, 4 Dill. 425, Fed. Cas. No. 8080; *McCarthy v. Froelke*, 63 Ind. 511; Opinion of Justices, 41 N. H. 556; *In re Wehlitz*, 16 Wis. 447, 84 Am. Dec. 702; *Ex parte Kinney*, 3 Hughes, 15, Fed. Cas. No. 7825.

¹⁸ *Dred Scott v. Sandford*, 19 How. 405-422, 15 L. ed. 691; *In re Wehlitz*, 16 Wis. 447, 84 Am. Dec. 702.

¹⁹ *United States v. Cruikshank*, 92 U. S. 549, 23 L. ed. 588; *Ex parte Siebold*, 100 U. S. 390, 25 L. ed. 717; *Marks v. Marks*, 75 Fed. 324; *Keller v. Corpus Christi*, 50 Tex. 629, 32 Am. Rep. 616.

²⁰ *Gassies v. Ballou*, 6 Pet. 762, 8 L. ed. 573; *Boyd v. Thayer*, 143 U. S. 161, 12 S. Ct. 381, 36 L. ed. 103; *Smith v. Moody*, 26 Ind. 301.

²¹ *Collet v. Collet*, 2 Dall. 294, Fed. Cas. No. 3001.

²² *Ex parte Knowles*, 5 Cal. 300.

²³ *Commonwealth v. Towles*, 5 Leigh, 743; *Page v. Allen*, 58 Pa. St. 338, 98 Am. Dec. 272.

²⁴ *Huber v. Beily*, 53 Pa. St. 112.

²⁵ *Ex parte Smith*, 22 Fed. Cas. 380; *Ex parte Knowles*, 5 Cal. 300; *Ex parte Beavins*, 33 N. H. 89.

²⁶ *New Hampshire v. Whittemore*, 50 N. H. 245.

ings.²⁷ If state courts possess the necessary jurisdiction under state laws Congress may empower them to naturalize aliens and give validity to their acts in so doing.²⁸

— Evidence of Naturalization.

Inasmuch as naturalization proceedings must be had before a court of record, the record of the judgment admitting an alien to citizenship is evidence of his naturalization.²⁹ The record need not show affirmatively the existence of all the legal requisites;³⁰ it will be presumed conclusively that all the prerequisites have been complied with,³¹ and the certificate cannot be set aside on the ground that the facts were falsely represented to the court.³² While the record is the best proof of naturalization, yet where the record cannot be produced, the fact may be proved by other evidence.³³

— Operation and Effect.

Naturalization has a retroactive effect and removes all liability to forfeiture of land held while an alien,³⁴ and where an alien takes by grant or by location on public lands, his subsequent naturalization relates back and obviates every consequence of his alien disability.³⁵ The naturalization of a father gives citizen-

²⁷ *Ex parte Stephens*, 4 Gray, 559; *Ex parte Beavins*, 33 N. H. 89.

²⁸ *Ex parte Knowles*, 5 Cal. 300; *Bump v. Commonwealth*, 3 Pa. St. 475; *Morgan v. Dudley*, 18 B. Mon. 693, 68 Am. Dec. 735.

²⁹ *Stork v. Chesapeake Ins. Co.*, 7 Cr. 423, 3 L. ed. 391; *Spratt v. Spratt*, 4 Pet. 408, 7 L. ed. 897; *Mutual Benefit Ins. Co. v. Tisdale*, 91 U. S. 238, 23 L. ed. 314; *The Acorn*, 2 Abb. 444, Fed. Cas. No. 29; *In re Clark*, 18 Barb. 444; *McCarthy v. Marsh*, 5 N. Y. 263; *Eitchie v. Putnam*, 13 Wend. 524.

³⁰ *Harley v. State*, 40 Ala. 697.

³¹ *Spratt v. Spratt*, 4 Pet. 408, 7 L. ed. 897.

³² *United States v. Gleason*, 78 Fed. 397; *Pintsch C. Co. v. Bergin*, 84 Fed. 141.

³³ *Boyd v. Nebraska*, 143 U. S. 180, 12 S. Ct. 375, 36 L. ed. 103; *Blair v. Silver Peak Min. Co.*, 93 Fed. 335.

³⁴ *Osterman v. Baldwin*, 6 Wall. 122, 18 L. ed. 730; *Manuel v. Wulff*, 152 U. S. 511, 14 S. Ct. 653, 38 L. ed. 562; *Williams v. Bennett*, 1 Tex. Civ. App. 506, 20 S. W. 858.

³⁵ *Gouverneur's Heirs v. Robertson*, 11 Wheat. 350, 6 L. ed. 488; *Bogan v. Edinburgh Land Co.*, 63 Fed. 197; *Lone Jack Min. Co. v.*

ship to minor children,³⁶ but the status acquired by minors at the time their father filed his declaration of intention may be repudiated if they attain their majority before he is naturalized.³⁷ A *minor* child who was in the country at the time of the passage of the act of April 14, 1802, acquired citizenship, although he was not in the country at the time of naturalization.³⁸

Meggison, 82 Fed. 94; Hanrick v. Hanrick, 54 Tex. 114; Baker v. Westcott, 73 Tex. 134, 11 S. W. 159; Culverhouse v. Beach, 1 Johns. Cas. 399.

³⁶ Boyd v. Nebraska, 143 U. S. 177, 12 S. Ct. 375, 36 L. ed. 103.

³⁷ Boyd v. Nebraska, 143 U. S. 177, 12 S. Ct. 375, 36 L. ed. 103; State v. Strenkens, 60 Minn. 327, 62 N. W. 260.

³⁸ Campbell v. Gordon, 6 Cr. 182, 3 L. ed. 190.

—Laws on the subject of bankruptcies.

Bankruptcy—Meaning of Term.

In American law the distinction between bankruptcy and insolvency seems to have been lost,¹ and no practical distinction has ever been attempted.² "Insolvency," as applied to voluntary applications for a decree, has been held to mean an inability to meet engagements, but in its relation to compulsory proceedings by creditors, to mean the bankruptcy of the debtor as known to the court, as a ground for proceedings,³ and "bankruptcy" has been defined as the stoppage and breaking up of business from inability to carry it on.⁴ The word bears a meaning coextensive with insolvency and is equivalent to that word in the constitution.⁵ The various bankrupt acts of Congress seem to regard insolvency as a condition precedent to a judicial declaration that a debtor is bankrupt—a condition arising from certain circumstances, or from certain acts upon the part of the debtor; e. g., inability to pay debts in money as they become due in the ordinary course of business,⁶ or fraudulent transfers or assignments made with intent to defeat creditors' claims.⁷ The word is used in the constitution in the plural as part of an expression "sub-

1 *Sturges v. Crowninshield*, 4 Wheat. 196-198, 4 L. ed. 529.

2 *In re Reiman*, 7 Ben. 463, Fed. Cas. No. 11,673.

3 *Ex parte Hull*, 12 Fed. Cas. 856; *West v. Creditors*, 4 Rob. (La.) 92.

4 *Sturges v. Crowninshield*, 4 Wheat. 195, 4 L. ed. 529; *Ex parte Breneman*, *Crabbe*, 465, Fed. Cas. No. 1830; *Arnold v. Maynard*, 2 Story, 354, Fed. Cas. No. 561.

5 *Morse v. Hovey*, 1 Barb. Ch. 404.

6 *Toof v. Martin*, 13 Wall. 47, 20 L. ed. 481; *Wager v. Hall*, 16 Wall. 599, 21 L. ed. 504; *Dutcher v. Wright*, 94 U. S. 557, 24 L. ed. 130; *Anschutz v. Hoerr*, 1 Fed. 593; *Roberts v. Hill*, 23 Blatchf. 313, 24 Fed. 573; *Case v. Citizens' Bank*, 2 Woods, 26, Fed. Cas. No. 2489; *In re Schoenberger*, 21 Fed. Cas. 1335; *Swan v. Robinson*, 5 Fed. 294.

7 *United States v. Hooe*, 3 Cr. 91, 2 L. ed. 370; *United States v. The Marshal etc.*, 2 Brock. 491, Fed. Cas. No. 15,727; *United States v. Langton*, 5 Mason, 284, Fed. Cas. No. 15,560; *Wilson v. City Bank*, 17 Wall. 487, 21 L. ed. 723; *National Bank v. Colby*, 21 Wall. 613, 22 L. ed. 687.

ject of bankruptcies," over which subject Congress has general jurisdiction.⁸

— Uniformity.

To come within the constitutional provision, a bankrupt law must be uniform throughout the United States;⁹ but the uniformity contemplated is geographical and not personal,¹⁰ and refers to the general policy and operation of the law, although it may, in some minor respects, operate differently in different states.¹¹ So a law is uniform when the trustee takes in each state whatever would have been available to execution creditors,¹² and the allowance of exemptions accorded in each state is not incompatible with the constitutional requirement, although the amount of such exemptions may differ in the several states.¹³

— Power of Congress.

The power of Congress under this clause is plenary over the subject of bankruptcy, and it is not limited to acts similar in scope to those in force in England at the time

⁸ *In re Klein*, 1 How. 277, note, Fed. Cas. No. 7865; *In re Silverman*, 1 Saw. 410, 2 Abb. U. S. 243, Fed. Cas. No. 12,855.

⁹ *Hanover Nat. Bank v. Moyses*, 186 U. S. 184, 22 S. Ct. 857, 46 L. ed. 1113; *Day v. Bardwell*, 3 Bank. Reg. 455; *In re Dillard*, 9 Bank. Reg. 8, 2 Hughes, 190, Fed. Cas. No. 3912; *In re Deckert*, 10 Bank. Reg. 1, 2 Hughes, 183, Fed. Cas. No. 3728; *In re Duerson*, 13 Bank. Reg. 183, Fed. Cas. No. 4117; *In re Shipman*, 14 Bank. Reg. 570, 2 Hughes, 227, Fed. Cas. No. 12,791; *Bush v. Lester*, 55 Ga. 579; *Kittridge v. Warren*, 14 N. H. 509.

¹⁰ *Hanover Nat. Bank v. Moyses*, 186 U. S. 188, 22 S. Ct. 857, 46 L. ed. 1113.

¹¹ *In re Jordan*, 8 Bank. Reg. 180, Fed. Cas. No. 7514; *Darling v. Berry*, 13 Fed. 659.

¹² *Hanover Nat. Bank v. Moyses*, 186 U. S. 190, 22 S. Ct. 857, 46 L. ed. 1113; *In re Ruth*, 1 Bank. Reg. Sup. 154, Fed. Cas. No. 12,172; *In re Appold*, 1 Bank. Reg. 178, Fed. Cas. No. 499; *In re Beckerford*, 4 Bank. Reg. 59, 1 Dill. 45, Fed. Cas. No. 1209; *In re Jordan*, 8 Bank. Reg. 180, Fed. Cas. No. 7514; *In re Deckert*, 10 Bank. Reg. 1, 2 Hughes, 183, Fed. Cas. No. 3728.

¹³ *Hanover Nat. Bank v. Moyses*, 186 U. S. 189, 22 S. Ct. 857, 46 L. ed. 1113; *In re Appold*, 1 Bank. Reg. 621, Fed. Cas. No. 499.

the constitution was adopted;¹⁴ it is general, unlimited and unrestricted,¹⁵ save in the requirement that the law shall be uniform,¹⁶ and applies to all classes of persons,¹⁷ and to voluntary and involuntary bankruptcy.¹⁸ All uniform legislation tending to promote the distribution of an insolvent's estate among his creditors, and his discharge from their demands, is within the power of Congress;¹⁹ but a bankrupt law need not provide for the discharge of the debtor.²⁰ The power to enact implies power to make the law efficient,²¹ and includes an act punishing the fraudulent disposition of goods obtained on credit,²² or attempts to evade the bankrupt law or to fraudulently secure the benefit of it;²³ providing for compositions with creditors,^{23a} or avoiding assignments under state laws.²⁴ Con-

¹⁴ *In re Silverman*, 2 Abb. U. S. 243, 1 Saw. 410, Fed. Cas. No. 12,855.

¹⁵ *In re Silverman*, 2 Abb. U. S. 243, 1 Saw. 410, Fed. Cas. No. 12,855; *In re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673; *Thompson v. Alger*, 12 Met. 428.

¹⁶ *Kunzler v. Kohaus*, 5 Hill, 317; *In re Klein*, 1 How. 277, note, Fed. Cas. No. 7865.

¹⁷ *In re Klein*, 1 How. 277, note, Fed. Cas. No. 7865; *In re California Pac. R. R.*, 3 Saw. 240, Fed. Cas. No. 2315; *In re Silverman*, 2 Abb. U. S. 243, 1 Saw. 410, Fed. Cas. No. 12,855; *Morse v. Hovey*, 1 Sand. Ch. 187; *Kunzler v. Kohaus*, 5 Hill, 317.

¹⁸ *In re Klein*, 1 How. 277, note, Fed. Cas. No. 7865; *State Bank v. Wilborn*, 6 Ark. 35; *Lalor v. Wattles*, 3 Gilm. 225; *Kunzler v. Kohaus*, 5 Hill, 317; *Land v. Pierce*, 25 Me. 233; *Thompson v. Alger*, 12 Met. 428; *Dresser v. Brooks*, 3 Barb. 429; *Hastings v. Fowler*, 2 Ind. 216; *Cutler v. Folsom*, 17 N. H. 139; *McCormick v. Pickering*, 4 N. Y. 276; *Keen v. Mould*, 18 Ohio, 12; *Rowan v. Holcomb*, 16 Ohio, 463.

¹⁹ *In re Silverman*, 2 Abb. U. S. 243, 1 Saw. 410, Fed. Cas. No. 12,855; *In re Klein*, 1 How. 277, note, Fed. Cas. No. 7865; *In re California etc. R. R.*, 3 Saw. 242, Fed. Cas. No. 2315; *Kunzler v. Kohaus*, 5 Hill, 317; *Sackett v. Andross*, 5 Hill, 327; *McCormick v. Pickering*, 4 N. Y. 382.

²⁰ *In re California etc. R. R.*, 3 Saw. 242, Fed. Cas. No. 2315; *Van Nostrand v. Barr*, 30 Md. 128.

²¹ *Russell v. Cheatham*, 16 Miss. 703.

²² *United States v. Pusey*, Fed. Cas. No. 16,098.

²³ *United States v. Fox*, 95 U. S. 672, 24 L. ed. 538.

^{23a} *In re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673.

²⁴ *In re Breneman, Crabbe*, 456, Fed. Cas. No. 1830.

gress is not forbidden to pass laws impairing the obligation of contracts, and a bankrupt act may provide for the discharge of a bankrupt from debts contracted before its passage,²⁵ and may destroy liens upon the bankrupt's property, whether created by contract, by statute, or by judgment;²⁶ but Congress cannot empower the states to give a bankrupt exemption from debts created before the passage of the state exemption laws.²⁷ Congress may, however, declare what and how much of the debtor's property shall be exempt,²⁸ and state exemption laws in conflict must yield.²⁹ This clause authorizes the passage of laws giving jurisdiction to district and circuit courts in bankruptcy matters and prescribing modes of procedure,³⁰ but state courts cannot be invested with jurisdiction in bankruptcy.³¹

— Powers of the States.

The power given to Congress is not exclusive, and in the absence of congressional action the states may enact insolvent laws.³² It is the actual exercise of the power by Congress to

²⁵ In *re Klein*, 1 How. 277, note, Fed. Cas. No. 7865; In *re Smith*, 22 Fed. Cas. 401; In *re Smith*, 2 Woods, 460, Fed. Cas. No. 12,996; In *re Wyllie*, 2 Hughes, 453, Fed. Cas. No. 18,112; *State Bank v. Wilborn*, 6 Ark. 35; *Land v. Pierce*, 25 Me. 233; *Cutler v. Folsom*, 17 N. H. 139; *Kunzler v. Kohaus*, 5 Hill, 317; *Morse v. Hovey*, 1 Barb. Ch. 404.

²⁶ In *re Jordan*, Fed. Cas. No. 7514; *Bank of Columbia v. Overstreet*, 10 Bush (Ky.), 48.

²⁷ *Gunn v. Barry*, 8 Bank. Reg. 1; In *re Dillard*, 9 Bank. Reg. 16, 2 Hughes, 190, Fed. Cas. No. 3912; In *re Everett*, 9 Bank. Reg. 93, Fed. Cas. No. 4579.

²⁸ In *re Reiman*, 7 Ben. 455, Fed. Cas. No. 11,673; *Salentine v. Fink*, 8 Biss. 503, Fed. Cas. No. 12,250.

²⁹ In *re Brown*, 3 Bank. Reg. 61, Fed. Cas. No. 1980; *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 326.

³⁰ *Mitchell v. Great Works etc. Co.*, 2 Story, 648, Fed. Cas. No. 9662; *Sherman v. Bingham*, 1 Low, 575, Fed. Cas. No. 12,733; *Goodall v. Tuttle*, 3 Biss. 219, Fed. Cas. No. 5533.

³¹ *McLean v. Lafayette Bank*, 3 McLean, 415, Fed. Cas. No. 8886; *Mitchell v. Great Works etc. Co.*, 2 Story, 648, Fed. Cas. No. 9662.

³² *Sturges v. Crowninshield*, 4 Wheat. 196, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 264, 275, 276, 307, 314, 369, 6 L. ed. 606; *Baldwin v. Hale*, 1 Wall. 228, 17 L. ed. 531; *Cook v. Moffatt*, 5 How. 316,

pass bankrupt laws, and not the mere grant to Congress, that precludes its exercise on the part of the states.³³ This right of the states is not extinguished, but merely suspended, by the enactment of a national bankrupt law.³⁴

State laws are not abrogated by the passage of a national act; they continue in force up to the time when the national act goes into effect, and discharges granted under them are valid,³⁵ and where a state court has acquired jurisdiction in insolvency it may proceed to judgment.³⁶ This jurisdiction of the state court attaches as soon as it makes an order staying creditors from interference with the property of the debtor.³⁷ As to future cases under state laws, however, a national act suspends all jurisdic-

12 L. ed. 159; *Bank of Tennessee v. Horn*, 17 How. 161, 15 L. ed. 70; *In re Reiman*, 7 Ben. 466, Fed. Cas. No. 11,673; *Mather v. Nesbit*, 4 McCrary, 506, 13 Fed. 873; *Carling v. Seymour Lumber Co.*, 113 Fed. 483; *State v. Curran*, 12 Ark. 352; *Rhodes v. Borden*, 67 Cal. 8, 6 Pac. 850; *Hempstead v. Reed*, 6 Conn. 490; *Orr v. Lissso*, 33 La. Ann. 477; *Felch v. Bugbee*, 48 Me. 11, 77 Am. Dec. 204; *Gorely v. Butler*, 147 Mass. 12, 16 N. E. 737; *Mather v. Bush*, 16 Johns. 233, 8 Am. Dec. 313; *In re Reynolds*, 8 R. I. 489, 5 Am. Rep. 617.

³³ *Sturges v. Crowninshield*, 4 Wheat. 196, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 275, 276, 6 L. ed. 606; *New Lamp etc. Co. v. Ansonia etc. Co.*, 91 U. S. 661, 23 L. ed. 336; *Adams v. Storey*, 1 Paine, 79; *Blanchard v. Russell*, 13 Mass. 1, 7 Am. Dec. 106; *Betts v. Bagley*, 29 Mass. 572; *Pugh v. Bussel*, 2 Blackf. 394; *Alexander v. Gibson*, 1 Nott & McC. 480.

³⁴ *Sturges v. Crowninshield*, 4 Wheat. 196, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 296, 6 L. ed. 606; *In re Bruss-Ritter Co.*, 90 Fed. 652; *Martin v. Berry*, 37 Cal. 208; *Van Nostrand v. Barr*, 30 Md. 128; *Boedefeld v. Reed*, 55 Cal. 299.

³⁵ *Martin v. Berry*, 37 Cal. 209; *Day v. Bardwell*, 97 Mass. 250; *Chamberlain v. Perkins*, 51 N. H. 340; *Augsbury v. Crossman*, 10 Hun, 589; *Reed v. Taylor*, 32 Iowa, 209, 7 Am. Rep. 180; *In re Zeigenfuss*, 2 Ired. 463.

³⁶ *Ex parte Christy*, 3 How. 318, 11 L. ed. 603; *In re Davis*, 1 Saw. 262; *Martin v. Berry*, 37 Cal. 209; *Meekins v. Creditors*, 10 La. Ann. 497; *Baum v. Stern*, 1 S. C. 419; *Augustine v. McFarland*, 2 Fed. Cas. 214; *Doremus v. Walker*, 8 Ala. 200, 42 Am. Dec. 638; *Reed v. Taylor*, 32 Iowa, 209, 7 Am. Rep. 180; *Lavinder v. Gosnell*, 43 Md. 163; *Larrabee v. Talbott*, 5 Gill, 426, 46 Am. Dec. 637; *Longis v. Creditors*, 20 La. Ann. 15; *Judd v. Ives*, 4 Met. 401; *Minot v. Thacher*, 48 Mass. 348, 41 Am. Dec. 444.

³⁷ *Martin v. Berry*, 37 Cal. 208; *Meekins v. Creditors*, 19 La. Ann. 511.

tion upon becoming operative,³⁸ and in such cases the courts will grant motions to dismiss proceedings in state courts,³⁹ or will enjoin assignees under state laws from interfering with debtor's property.⁴⁰ State laws relating to insolvent corporations are superseded by a national act, jurisdiction to decree forfeiture of charters only remaining,⁴¹ and where a corporation has been dissolved under a state law, it is to be deemed to be still in existence for the purpose of proceedings under the national act.⁴² A provision in a state law prohibiting transfers by insolvent corporations with intent to give preferences is superseded by a national act,⁴³ as also is a law permitting attachments in cases which would authorize proceedings in bankruptcy.⁴⁴ An assignment under a state law which has been suspended by a national act is good as between the parties thereto, although it would not be as against creditors objecting.⁴⁵

State laws being merely suspended by the enactment of a national act, it follows that upon the repeal of the national act they are ipso facto revived, and no re-enactment is necessary,⁴⁶ and this principle has been extended so far as to holding that a

³⁸ *New Lamp etc. Co. v. Ansonia etc. Co.*, 91 U. S. 661, 23 L. ed. 336; *Corner v. Miller*, 1 Bank. Reg. 403; *Commonwealth v. O'Hara*, 1 Bank. Reg. 19; *Perry v. Langley*, 2 Bank. Reg. 180, Fed. Cas. No. 8067; *Van Nostrand v. Barr*, 30 Md. 128; *Martin v. Berry*, 37 Cal. 208; *Cassard v. Kroner*, 4 Bank. Reg. 569; *In re Reynolds*, 8 R. I. 485, 5 Am. Rep. 615; *Rowe v. Page*, 54 N. H. 190; *In re Eames*, 2 Story, 322, Fed. Cas. No. 4237.

³⁹ *In re Reynolds*, 8 R. I. 490, 5 Am. Rep. 618.

⁴⁰ *Griswold v. Pratt*, 9 Met. 17; *Markson v. Haney*, 1 Dill. 503, Fed. Cas. No. 9098; *Ex parte Eames*, 2 Story, 325, Fed. Cas. No. 4237; *Hudson v. Schwab*, 12 Fed. Cas. 815; *In re Pittelkow*, 92 Fed. 903.

⁴¹ *Thorndyke v. Bank*, 1 Woods, 8 Fed. Cas. No. 13,992; *In re Merchants' Ins. Co.*, 3 Biss. 162, Fed. Cas. No. 9441; *In re Independent Ins. Co.*, 1 Holmes, 103, Fed. Cas. No. 7017; *Platt v. Archer*, 9 Blatchf. 559, Fed. Cas. No. 11,213.

⁴² *In re Independent Ins. Co.*, 1 Holmes, 103, Fed. Cas. No. 7017; *Thorndyke v. Bank*, 1 Woods, 8, Fed. Cas. No. 13,992.

⁴³ *French v. O'Brien*, 52 How. Pr. 394.

⁴⁴ *Tobin v. Trump*, 3 Brewst. 288.

⁴⁵ *Boese v. King*, 108 U. S. 386, 2 S. Ct. 765, 27 L. ed. 760; *Castelberg v. Wheeler*, 68 Md. 281, 12 Atl. 8.

⁴⁶ *Butler v. Gorely*, 146 U. S. 313, 13 S. Ct. 88, 36 L. ed. 981.

discharge under a state law so revived extended to debts incurred during the suspension of the statute.⁴⁷ A state law passed while the national act is in force is not invalid; its operation is merely suspended, and upon the repeal of the national act it becomes effective.⁴⁸

— What State Laws Remain Operative.

A national bankrupt law does not necessarily suspend all state laws relating to insolvency; only those laws which are in conflict with the national act are affected.⁴⁹ State laws remain in full force with respect to matters over which the general law declines to take jurisdiction,⁵⁰ and with respect to matters wherein the amount involved is less than that prescribed in the general law.⁵¹ State laws regulating assignments for the benefit of creditors but not discharging debtors from their debts, are not suspended;⁵² such a provision is not necessarily a part of an insolvency law,⁵³ but an assignment made as part of the proceedings under a state insolvency law is void while a national

⁴⁷ *Boedefeld v. Reed*, 55 Cal. 301; *In re Damon*, 70 Me. 154; *Palmer v. Hixon*, 74 Me. 448.

⁴⁸ *Tua v. Carriere*, 117 U. S. 210, 6 S. Ct. 555, 29 L. ed. 855; *Seattle Coal Co. v. Thomas*, 57 Cal. 197; *Baum v. Raphael*, 56 Cal. 361; *Palmer v. Hixon*, 74 Me. 447.

⁴⁹ *Mayer v. Hellman*, 91 U. S. 502, 23 L. ed. 377; *Chandler v. Siddle*, 3 Dill. 477, Fed. Cas. No. 2594; *Appeal of Geery*, 43 Conn. 289, 21 Am. Rep. 653; *Pugh v. Bussell*, 2 Blackf. 394; *Fisk v. Montgomery*, 21 La. Ann. 446; *Clarke v. Ray*, 1 Har. & J. 318.

⁵⁰ *In re Worcester County*, 102 Fed. 808; *In re Wilmington Hosiery Co.*, 102 Fed. 808; *In re Scholtz*, 106 Fed. 834; *Appeal of Geery*, 43 Conn. 289, 21 Am. Rep. 653; *Wendell v. Lebon*, 30 Minn. 234, 15 N. W. 109; *Simpson v. City Sav. Bank*, 56 N. H. 466.

⁵¹ *Shepardson's Appeal*, 36 Conn. 23.

⁵² *Mayer v. Hellman*, 91 U. S. 502, 23 L. ed. 377; *In re Sievers*, 91 Fed. 368; *Davis v. Bohle*, 92 Fed. 326; *In re Hawkins*, 34 Conn. 348; *Reed v. Taylor*, 32 Iowa, 209; *Maltbie v. Hotchkiss*, 38 Conn. 80; *Ebersole v. Adams*, 10 Bush, 83; *Linthicum v. Fenley*, 11 Bush, 131. But see *Perry v. Langley*, 19 Fed. Cas. 284; *Globe Ins. Co. v. Cleveland Ins. Co.*, 10 Fed. Cas. 491; *Griswold v. Pratt*, 9 Met. 17.

⁵³ *Cook v. Rogers*, 31 Mich. 391; *Thrasher v. Bentley*, 1 Abb. N. C. 39.

law is in operation.⁵⁴ A national act does not operate to suspend state laws which merely protect the person of the debtor from imprisonment and do not affect the contract;⁵⁵ laws abolishing imprisonment on civil process;⁵⁶ laws providing for the arrest and punishment of fraudulent debtors;⁵⁷ laws prohibiting fraudulent conveyances;⁵⁸ or laws enabling a creditor to prevent the departure of his debtor from the state.⁵⁹ A law for the settlement of the insolvent estates of deceased persons is not affected,⁶⁰ nor is the general equitable jurisdiction of state courts to wind up the affairs of an insolvent domestic corporation taken away until the institution of bankruptcy proceedings.⁶¹ A state law providing for the protection of savings banks and their depositors is effective during the operation of a national bankrupt law.⁶² A law authorizing a creditor to enforce by warrant the payment of debts for which the debtor has been prosecuted is not an insolvent law, and is not suspended by a national act.⁶³

— Validity of State Insolvent Laws and Discharges Thereunder.

The power of the states to enact insolvent laws, in the absence of national legislation, is subject to the constitutional prohibition against impairing the obligation of contracts; such a law operating upon contracts entered into before its passage

⁵⁴ *Bowe v. Page*, 54 N. H. 190; *Shryock v. Bashore*, 82 Pa. St. 159.

⁵⁵ *Sullivan v. Heiskell*, *Crabbe*, 525, Fed. Cas. No. 13,594; *Stockwell v. Silloway*, 100 Mass. 287; *Ex parte Jacobs*, 12 Abb. Pr., N. S., 273; *Jordan v. Hall*, 9 B. I. 220.

⁵⁶ *In re Reynolds*, 8 B. I. 485, 5 Am. Rep. 615; *In re Rank*, *Crabbe*, 493, Fed. Cas. No. 11,566; *Shears v. Solhinger*, 10 Abb. Pr., N. S., 287; *Steelman v. Mattix*, 36 N. J. L. 344, 20 Am. Rep. 389.

⁵⁷ *Scully v. Kirkpatrick*, 79 Pa. St. 324, 21 Am. Rep. 62; *Bates v. Rowley*, 33 Leg. Int. 202; *Gregg v. Hilsen*, 34 Leg. Int. 20.

⁵⁸ *Ebersole v. Adams*, 10 Bush, 83.

⁵⁹ *Gottschalk v. Meyer*, 28 La. Ann. 885.

⁶⁰ *Hawkins v. Learned*, 54 N. H. 333.

⁶¹ *Watson v. Citizens' Sav. Bank*, 5 Rich. 159.

⁶² *Simpson v. City Sav. Bank*, 56 N. H. 466.

⁶³ *Berthelon v. Betts*, 4 Hill, 577.

impairs the obligation of those contracts and is void.⁶⁴ An amendment to an existing insolvent law is subject to this prohibition where it reduces the number of creditors who may grant a release, or otherwise lessens the burden on the insolvent.⁶⁵ If, however, the amendatory act is more favorable to creditors than the act amended, there can be no objection to a discharge on this ground.⁶⁶ A state law cannot discharge debts existing but not proved against the debtor's estate at the time of its enactment;⁶⁷ nor can it operate to dissolve an attachment previously levied.⁶⁸ A discharge under a state law cannot suspend the operation of the statute of limitations against assumpsit upon a contract made before the passage of the law, even though payment was not due until after.⁶⁹ The merger of a previously contracted debt in a judgment after the passage of the act does not render the act operative as to such debt.⁷⁰ Creditors of a corporation who have accepted dividends under an assignment provided by a state insolvent law are estopped to set up the invalidity of the law and sue the stockholders for the unpaid residue of their debts.⁷¹

In considering the operation of state insolvent laws the states are to be deemed foreign to each other,⁷² and such laws cannot affect the rights of nonresident creditors,⁷³ whether such non-

⁶⁴ *Sturges v. Crowninshield*, 4 Wheat. 196, 4 L. ed. 529; *McMillan v. McNeill*, 4 Wheat. 209, 4 L. ed. 552; *Farmers' etc. Bank v. Smith*, 6 Wheat. 134, 5 L. ed. 224; *Ogden v. Saunders*, 12 Wheat. 264, 275, 276, 6 L. ed. 606; *Planters' Bank v. Sharp*, 6 How. 328, 12 L. ed. 447; *Baldwin v. Hale*, 1 Wall. 230, 17 L. ed. 531; *Williams v. Bruffy*, 96 U. S. 184, 24 L. ed. 716; *Brown v. Smart*, 145 U. S. 457, 12 S. Ct. 958, 36 L. ed. 773; *Smith v. Mead*, 3 Conn. 256, 8 Am. Dec. 184; *Boardman v. De Forest*, 5 Conn. 12; *Schwartz v. Drinkwater*, 70 Me. 410; *Roosevelt v. Cebra*, 17 Johns. 108; *Salters v. Tobias*, 3 Paige Ch. 344; *Elton v. O'Connor*, 6 N. Dak. 6, 68 N. W. 85.

⁶⁵ *In re Wendell*, 19 Johns. 153.

⁶⁶ *Hundley v. Chaney*, 65 Cal. 363, 4 Pac. 238.

⁶⁷ *Schwartz v. Drinkwater*, 70 Me. 410.

⁶⁸ *Peabody v. Stetson*, 88 Me. 279, 34 Atl. 76.

⁶⁹ *Sacia v. De Graff*, 1 Cow. 358.

⁷⁰ *Conway v. Seamons*, 55 Vt. 11, 45 Am. Rep. 581.

⁷¹ *Van Hook v. Whitlock*, 26 Wend. 53, 37 Am. Dec. 248.

⁷² *Cook v. Moffatt*, 5 How. 308, 309, 12 L. ed. 159; *Beers v. Rhea*, 5 Tex. 354.

⁷³ *Sturges v. Crowninshield*, 4 Wheat. 207, 4 L. ed. 529; *McMillan*

residents be citizens of the United States or foreigners.⁷⁴ So actions upon negotiable paper payable to nonresidents cannot be barred by a discharge in insolvency,⁷⁵ and this is true, although the paper was originally drawn between residents and

v. McNeill, 4 Wheat. 212, 4 L. ed. 552; *Ogden v. Saunders*, 12 Wheat. 255, 262, 357, 6 L. ed. 606; *Suydam v. Broadnax*, 14 Pet. 75, 10 L. ed. 357; *Baldwin v. Hale*, 1 Wall. 228, 17 L. ed. 531, affirming 1 Cliff. 514, Fed. Cas. No. 5913; *Denny v. Bennett*, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491; *Satterthwaite v. Ambergrombie*, 23 Blatchf. 309, 24 Fed. 544; *Newton v. Hagerman*, 10 Saw. 462, 22 Fed. 526; *Von Glahn v. Varrenne*, 1 Dill. 515, Fed. Cas. No. 16,994; *Mather v. Nesbit*, 13 Fed. 872; *Emery v. Greenough*, 3 Dall. 369, 1 L. ed. 640; *Woodhull v. Wagner*, Baldw. 296, Fed. Cas. No. 17,975; *Babcock v. Weston*, 1 Gall. 168, Fed. Cas. No. 703; *Hinkley v. Mareau*, 3 Mason, 88, Fed. Cas. No. 4523; *Campbell v. Claudius*, 1 Pet. C. C. 484, Fed. Cas. No. 2356; *Springer v. Foster*, 2 Story, 383, Fed. Cas. No. 13,266; *Atwater v. Townsend*, 4 Conn. 47, 10 Am. Dec. 97; *Norton v. Cook*, 9 Conn. 314, 23 Am. Dec. 342; *Van Baugh v. Van Arsdale*, 3 Caines, 154, 2 Am. Dec. 159; *Collins v. Rodolph*, 3 Greene (Iowa), 299; *Pugh v. Bussell*, 2 Blackf. 394; *Bancher v. Fisk*, 33 Me. 316; *Felch v. Bugbee*, 48 Me. 13, 77 Am. Dec. 206; *Braynard v. Marshall*, 1 Pick. 196; *Phelps v. Borland*, 103 N. Y. 410, 57 Am. Rep. 756, 9 N. E. 309; *Smith v. Smith*, 2 Johns. 235, 3 Am. Dec. 410; *Frey v. Kirk*, 4 Gill & J. 509, 23 Am. Dec. 581; *Watson v. Bourne*, 10 Mass. 337, 6 Am. Dec. 129; *Potter v. Kerr*, 1 Md. Ch. 275; *Vanuxem v. Hazelhurst*, 1 Southard 550, 7 Am. Dec. 552; *Main v. Messner*, 17 Or. 79, 20 Pac. 255; *Shelton v. Wade*, 14 Tex. 52, 51 Am. Dec. 722; *Bedell v. Scranton*, 54 Vt. 494.

⁷⁴ *McMillan v. McNeill*, 4 Wheat. 212, 4 L. ed. 552; *Pratt v. Chase*, 44 N. Y. 597, 4 Am. Rep. 718.

⁷⁵ *Baldwin v. Hale*, 1 Wall. 232, 17 L. ed. 531, affirming 1 Cliff. 515, Fed. Cas. No. 5913; *Baldwin v. Bank of Newbury*, 1 Wall. 239, 17 L. ed. 534; *Byrd v. Badger*, 1 McCall, 265, Fed. Cas. No. 2265; *Springer v. Foster*, 2 Story, 387, Fed. Cas. No. 13,266; *Rhodes v. Borden*, 67 Cal. 9, 6 Pac. 851; *Kelley v. Drury*, 9 Allen, 29; *Fareira v. Keevil*, 18 Mo. 188; *Beers v. Rhea*, 5 Tex. 349.

indorsed to a nonresident.⁷⁶ Otherwise, if it was indorsed after maturity,⁷⁷ unless before the petition was filed.^{77a}

It is immaterial where the contract was made or is payable,⁷⁸ but where, at the time of the discharge, both debtor and creditor are residents of the same state, the subsequent removal of the creditor to another state or the assignment of his rights to a nonresident, cannot remove the bar;⁷⁹ nor can a resident creditor proceed against the property of the insolvent in another state after the discharge of the latter.⁸⁰ It has been held also that the removal of a resident creditor, even before the discharge was granted, will not bar the release of his debt.⁸¹ A discharge of a debtor in one state which necessarily leaves the contract in force in another state can have no effect to discharge the debtor in the latter state, either from an action on the con-

⁷⁶ *Stevenson v. King*, 2 Cliff. 2, Fed. Cas. No. 13,417; *Towne v. Smith*, 1 Wood. & M. 122, Fed. Cas. No. 14,115; *Anderson v. Wheeler*, 25 Conn. 607; *Savoie v. Marsh*, 10 Met. 595, 43 Am. Dec. 452; *Phoenix Bank v. Batchelder*, 151 Mass. 591, 24 N. E. 918, 8 L. R. A. 644; *Donnell v. Lewis County Bank*, 80 Mo. 172; *Newmarket Bank v. Butler*, 45 N. H. 236; *Donnelly v. Corbett*, 7 N. Y. 500; *Ballard v. Webster*, 9 Abb. Pr. 404; *Smith v. Gardner*, 4 Bosw. 54; *Chase v. Flagg*, 48 Me. 182; *Felch v. Bugbee*, 48 Me. 9, 77 Am. Dec. 203; *Houghton v. Maynard*, 71 Mass. 552.

⁷⁷ *Hall v. Boardman*, 14 N. H. 38.

^{77a} *Fessenden v. Willey*, 84 Mass. 67, 79 Am. Dec. 762.

⁷⁸ *Boyle v. Zacharie*, 6 Pet. 348, 8 L. ed. 423; *Baldwin v. Hale*, 1 Wall. 223, 17 L. ed. 531; *Babcock v. Weston*, 1 Gall. 160, Fed. Cas. No. 703; *Agnew v. Platt*, 15 Pick. 420; *Marsh v. Putnam*, 69 Mass. 551; *Glenn v. Clabaugh*, 65 Md. 69, 3 Atl. 904; *Pinckney v. Lanoan*, 62 Md. 450; *Larrabee v. Talbott*, 5 Gill, 438, 46 Am. Dec. 642; *East-erly v. Goodwin*, 35 Conn. 284, 95 Am. Dec. 238; *Hawley v. Hunt*, 27 Iowa, 307, 1 Am. Rep. 274. But see *Smith v. Mead*, 3 Conn. 253, 8 Am. Dec. 183.

⁷⁹ *Von Glahn v. Varrenne*, 1 Dill. 517, Fed. Cas. No. 16,994; *Thomas v. Crow*, 65 Cal. 471, 4 Pac. 448; *Pugh v. Bussell*, 2 Blackf. 400; *Brigham v. Henderson*, 1 Cush. 432, 48 Am. Dec. 611; *Stone v. Tibbetts*, 26 Me. 112; *Peck v. Hibbard*, 26 Vt. 704, 62 Am. Dec. 609.

⁸⁰ *Cole v. Cunningham*, 133 U. S. 114, 10 S. Ct. 271, 33 L. ed. 538; *Burlock v. Taylor*, 16 Pick. 341; *Bank of Utica v. Card*, 7 Ohio, pt. 2, 170.

⁸¹ *Brigham v. Henderson*, 1 Cush. 430, 48 Am. Dec. 610; *Converse v. Bradley*, 1 Cush. 434; *Stoddard v. Harrington*, 100 Mass. 87, 1 Am. Rep. 92; *Stevens v. Norris*, 30 N. H. 466.

tract in that state,⁸² or from arrest and imprisonment there;⁸³ but where both parties were residents a discharge will bar a suit by the creditor in any other jurisdiction,⁸⁴ although the creditor be an alien.⁸⁵

Nonresident judgment creditors are also protected by this rule, whether their judgments were obtained in the state of discharge or not; the mere pursuit of a claim in the courts of the debtor's domicile does not operate as a waiver of the creditor's extraterritorial immunity from the effect of the discharge.⁸⁶ Undoubtedly where a creditor submits himself personally to the jurisdiction of the courts in the discharging state,⁸⁷ or has submitted his claim to the jurisdiction by presenting it to the assignee,⁸⁸ he is concluded by a discharge. But such submission to the jurisdiction must have been unequivocal,⁸⁹ and voluntary, with the apparent intent to waive extraterritorial immunity.⁹⁰ Such a waiver may be shown by the creditor's making himself a party to the insolvency pro-

⁸² *Cook v. Moffatt*, 5 How. 308, 12 L. ed. 159; *Beers v. Rhea*, 5 Tex. 354; *Hinckley v. Marean*, 2 Mason, 89, Fed. Cas. No. 6523; *Woodbridge v. Wright*, 3 Conn. 526.

⁸³ *Woodhull v. Wagner*, 1 Baldw. 297, Fed. Cas. No. 17,975; *Judd v. Porter*, 7 Me. 340; *Wood v. Malin*, 16 N. J. L. 209.

⁸⁴ *Hempstead v. Reed*, 6 Conn. 480; *Williams v. Guignard*, 2 How. (Miss.) 724; *Pitkin v. Thompson*, 30 Mass. 64; *Hall v. Boardman*, 14 N. H. 38; *Wheelock v. Leonard*, 20 Pa. St. 440; *Urton v. Hunter*, 2 W. Va. 83.

⁸⁵ *Von Glahn v. Varrenne*, 1 Dill. 515, Fed. Cas. No. 16,994.

⁸⁶ *Worthington v. Jerome*, 5 Blatchf. 279, Fed. Cas. No. 18,054; *Donnelly v. Corbett*, 7 N. Y. 503; *Soule v. Chase*, 39 N. Y. 344; *Murphy v. Manning*, 134 Mass. 489; *Evans v. Sprigg*, 2 Md. 470; *Potter v. Kerr*, 1 Md. Ch. 281; *Poe v. Duck*, 5 Md. 6; *Wyman v. Mitchell*, 1 Cow. 316; *Watson v. Bourne*, 10 Mass. 337, 6 Am. Dec. 129; *McCarty v. Gibson*, 5 Gratt. 307; *Hawley v. Hunt*, 27 Iowa, 303, 1 Am. Rep. 273; *Whitney v. Whiting*, 35 N. H. 466. But see *Davidson v. Smither*, 1 Biss. 349; *Betts v. Bagley*, 29 Mass. 572.

⁸⁷ *Von Glahn v. Varrenne*, 1 Dill. 517, Fed. Cas. No. 16,994.

⁸⁸ *Rosenheim v. Morrow*, 37 Fla. 188, 20 South. 245; *Brown v. Smart*, 69 Md. 327, 14 Atl. 470.

⁸⁹ *Donnelly v. Corbett*, 7 N. Y. 500.

⁹⁰ *Denny v. Bennett*, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491; *Towne v. Smith*, 1 Wood. & M. 127, Fed. Cas. No. 14,115; *Newton v. Hagerman*, 10 Saw. 462, 22 Fed. 526; *Norton v. Cook*, 9 Conn. 318,

ceedings and receiving a dividend.⁹¹ A creditor makes himself a party by proving his debt,⁹² or by uniting in recommending a trustee,⁹³ and his debt is barred by the discharge, unless the court was wanting in jurisdiction.⁹⁴ The mere appearance to oppose a discharge, however, will not render the discharge a bar to a nonresident's demand.⁹⁵ Where a resident creditor removes from the state after the entry of his judgment but before the commencement of insolvency proceedings a discharge will release the judgment,⁹⁶ and if a foreign debtor removes to the state where the creditor resides, and there obtains his discharge, the latter is barred.⁹⁷ The removal of a nonresident creditor to the state where his debtor resides extinguishes his immunity.⁹⁸

23 Am. Dec. 344; *Hall v. Williams*, 6 Pick. 243, 17 Am. Dec. 364; *Soule v. Chase*, 39 N. Y. 343.

⁹¹ *Clay v. Smith*, 3 Pet. 411, 7 L. ed. 723; *Gardner v. Lee's Bank*, 11 Barb. 558; *Journey v. Gardner*, 65 Mass. 355; *Woodbridge v. Wright*, 3 Conn. 523.

⁹² *Blackman v. Green*, 24 Vt. 17.

⁹³ *Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 91.

⁹⁴ *Agnew v. Platt*, 32 Mass. 417.

⁹⁵ *Norton v. Cook*, 9 Conn. 314, 23 Am. Dec. 342; *McCarty v. Gibson*, 5 Gratt. 307; *Collins v. Rodolph*, 3 Greene (Iowa), 299.

⁹⁶ *Brown v. Bridge*, 106 Mass. 563.

⁹⁷ *Beall v. Burchstead*, 64 Mass. 523. And see *Babcock v. Weston*, 1 Gall. 168, Fed. Cas. No. 703.

⁹⁸ *Hall v. Winchell*, 38 Vt. 588.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Money.

The term "money," as used in this clause, means gold, silver and copper coins,¹ and "to coin money" is to mold into form a metallic substance of intrinsic value.² The power to coin money and regulate its value is vested exclusively in Congress by this clause,³ without limitation or restriction,⁴ its object being to create and preserve the uniformity and purity of a standard of value, and to prevent the irregularities and confusion incident to different views of policy which would be brought to bear on the subject.⁵ It would seem that under its incidental powers, and without the express grant contained in the succeeding clause, Congress would have power to punish counterfeiting.⁶ It is in the discretion of Congress to make gold and silver, or anything else, legal tender.⁷ This grant of power to Congress cannot, when read with article I, section 10, clause 1, denying to the states the right to emit bills of credit, be deemed an implied prohibition against the making of treasury notes legal tender;⁸ the power to coin money and

¹ *Maynard v. Newman*, 1 Nev. 271; *Thayer v. Hedges*, 22 Ind. 301; *Hague v. Powers*, 39 Barb. 458; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 430.

² *Griswold v. Hepburn*, 2 Duvall, 29.

³ *Legal Tender Cases*, 12 Wall. 545, 20 L. ed. 287; *Van Husen v. Kanouse*, 13 Mich. 303.

⁴ *Maynard v. Newman*, 1 Nev. 271; *George v. Concord*, 45 N. H. 434; *Schollenberger v. Brinton*, 52 Pa. St. 9.

⁵ *United States v. Marigold*, 9 How. 567, 13 L. ed. 257.

⁶ *Fox v. Ohio*, 5 How. 433, 12 L. ed. 213; *United States v. Marigold*, 9 How. 567, 13 L. ed. 257; *United States v. Yates*, 6 Fed. 864.

⁷ *Anderson v. Dunn*, 6 Wheat. 220, 5 L. ed. 242; *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Briscoe v. Bank of Kentucky*, 11 Pet. 257, 9 L. ed. 709; *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 427; *Norris v. Clymer*, 2 Pen. 277; *Moor v. Reading*, 21 Pa. St. 188; *People v. Green*, 2 Wend. 274; *People v. Constant*, 11 Wend. 511.

⁸ *Legal Tender Cases*, 12 Wall. 547, 20 L. ed. 287.

the power to declare anything a legal tender are distinct.⁹ The grant of power to coin money does not necessarily make that money a legal tender at the fixed standard,¹⁰ and on the other hand, the legal tender acts do not fix a standard of value, or regulate money values, or make that money which has no intrinsic value.¹¹

Weights and Measures.

The power to fix the standard of weights and measures, while granted to Congress by this clause, has never been expressly denied to the states, and on the principle that it is not the grant of power to Congress, but its actual exercise of that power that makes its action exclusive, the states may exercise this power in the absence of congressional action.¹² Any action by Congress in the matter, however, would render any conflicting state legislation void.¹³

⁹ *Legal Tender Cases*, 12 Wall. 547, 20 L. ed. 287; *Thayer v. Hedges*, 22 Ind. 282.

¹⁰ *Van Husen v. Kanouse*, 13 Mich. 303.

¹¹ *Legal Tender Cases*, 12 Wall. 553, 20 L. ed. 287.

¹² *Houston v. Moore*, 5 Wheat. 49, 5 L. ed. 19; *Sturges v. Crowninshield*, 4 Wheat. 193, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 275, 276, 307, 6 L. ed. 606; *Weaver v. Fegely*, 29 Pa. St. 27, 7 Am. Dec. 151; *Evans v. Meyer*, 25 Pa. St. 114; *Farmers' etc. Bank v. Smith*, 3 Serg. & R. 69.

¹³ *Weaver v. Fegely*, 29 Pa. St. 27, 7 Am. Dec. 151.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

Counterfeiting.

Congress, having created a circulating medium under the power granted in the preceding clause, must have power to prevent its debasement and expulsion; and to this end the power stated in this clause was granted.¹ Under it Congress may provide for the punishment of the offense of passing, uttering or selling counterfeit coin,² or for importing and circulating counterfeits,³ and Congress may provide punishment for counterfeiting foreign coins made current by United States laws;⁴ but the coin counterfeited must have been included in the act of Congress.⁵ Congress may prohibit all imitations of metallic currency regardless of the fact that the purpose of the imitation is innocent.⁶ The offenses of counterfeiting coin and of passing counterfeit money are essentially different, the former being an offense against the government by which individuals may be affected, and the latter a private wrong by which the government may be remotely reached, if at all.⁷ The term "securities" includes treasury notes,⁸ and notes of a United States bank,^{8a} and the power to punish counterfeiting of se-

¹ *United States v. Marigold*, 9 How. 567, 568, 13 L. ed. 257; *Ex parte Carll*, 106 U. S. 523, 1 S. Ct. 536, 27 L. ed. 288.

² *United States v. Marigold*, 9 How. 567, 13 L. ed. 257.

³ *United States v. Marigold*, 9 How. 568, 13 L. ed. 257; *Legal Tender Cases*, 12 Wall. 658, 20 L. ed. 287; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 450.

⁴ *United States v. Gardner*, 10 Pet. 624, 9 L. ed. 556; *United States v. Brown*, 4 McLean, 142, Fed. Cas. No. 14,667; *United States v. Burns*, 5 McLean, 23, Fed. Cas. No. 14,691.

⁵ *United States v. Gardner*, 10 Pet. 624, 9 L. ed. 556.

⁶ *United States v. King*, 5 McLean, 210, Fed. Cas. No. 15,535.

⁷ *Fox v. Ohio*, 5 How. 433, 12 L. ed. 213; *United States v. Copper-smith*, 2 Flipp. 557, 4 Fed. 206; *Ex parte Wilson*, 114 U. S. 423, 5 S. Ct. 938, 29 L. ed. 89.

⁸ *United States v. Howell*, 11 Wall. 437, 20 L. ed. 195.

^{8a} *United States v. Turner*, 7 Pet. 136, 8 L. ed. 633; *Ex parte Houghton*, 7 Fed. 658, 8 Fed. 897; *State v. Randall*, 2 Ark. 89.

curities extends to securities issued by foreign countries or under their authority.⁹

—Powers of the States.

The distinction drawn between counterfeiting coin and passing counterfeit coin, viz., that the former is an offense against the United States and the latter an offense against the state,¹⁰ while it does not devert the federal government of power to punish the passing of counterfeits as an incident of its power to punish counterfeiting,¹¹ is the ground for the holding that the power of Congress to punish the passing of counterfeit money is not exclusive.¹² State courts have asserted the authority of the states to even punish counterfeiting,¹³ or having in one's possession instruments adapted and designed for making counterfeit coin.¹⁴

⁹ *United States v. Arjona*, 120 U. S. 488, 7 S. Ct. 628, 30 L. ed. 728; *People v. McDonnell*, 80 Cal. 288, 13 Am. St. Rep. 163, 22 Pac. 191.

¹⁰ *Fox v. Ohio*, 5 How. 433, 434, 12 L. ed. 213; *United States v. Marigold*, 9 How. 560, 13 L. ed. 257; *People v. White*, 34 Cal. 183; *Harlan v. People*, 1 Doug. (Mich.) 207; *Sizemore v. State*, 3 Head. 26; *State v. Antonio*, 2 Tread. 776.

¹¹ Cf. *Fox v. Ohio*, 5 How. 433, 12 L. ed. 213, and *United States v. Marigold*, 9 How. 567, 568, 13 L. ed. 257.

¹² *Fox v. Ohio*, 5 How. 433, 12 L. ed. 213; *United States v. Marigold*, 9 How. 567, 13 L. ed. 257; *Commonwealth v. Fuller*, 8 Met. 313, 41 Am. Dec. 509; *State v. Pitman*, 1 Brev. 32, 2 Am. Dec. 645; *State v. Tutt*, 2 Bail. 44, 21 Am. Dec. 508; *Sizemore v. State*, 3 Head. 26; *Dashing v. State*, 78 Ind. 358; *Martin v. State*, 18 Tex. App. 225; *Jett v. Commonwealth*, 18 Gratt. 953.

¹³ *Martin v. State*, 18 Tex. App. 225; *State v. Randall*, 2 Ark. 89; *People v. McDonnell*, 80 Cal. 288, 13 Am. St. Rep. 163, 22 Pac. 191.

¹⁴ *Harlan v. People*, 1 Doug. (Mich.) 219; *State v. Brown*, 2 Or. 221.

7. To establish postoffices and post-roads.

Postoffices.

The power given to Congress by this clause embraces the regulation of the entire postal system of the country.¹ "To establish" comprehends the renting or erection of buildings, and the appropriation of money for such purposes,² and the making of contracts relating to the mails.^{2a} Any means appropriate to the exercise of the power may be employed by Congress, as appointing postmasters, defining their duties and compensation, and providing for carriage of the mails.³ Congress may determine what may be carried in the mails,⁴ and may exclude matter issued in the furtherance of fraudulent schemes,⁵ lottery advertisements and letters or packages addressed to lotteries,⁶ and obscene matter.⁷ In thus excluding matter from the mails Congress does not interfere with the freedom of the press;⁸ nor does the fact that the transmission of such matter

¹ *In re Jackson*, 96 U. S. 732, 24 L. ed. 877; *In re Rapier*, 143 U. S. 133, 12 S. Ct. 374, 36 L. ed. 93; *Commerford v. Thompson*, 2 Flipp. 613, 1 Fed. 417; *Weeber v. United States*, 62 Fed. 741; *United States v. Loring*, 91 Fed. 882.

² *Searight v. Stokes*, 3 How. 151, 11 L. ed. 537; *Neil v. State*, 3 How. 720, 11 L. ed. 800; *Dickey v. Maysville etc. Co.*, 7 Dana, 113.

^{2a} *Searight v. Stokes*, 3 How. 151, 11 L. ed. 537.

³ *United States v. Rhodes*, 1 Abb. U. S. 50, Fed. Cas. No. 16,151; *United States v. McCready*, 11 Fed. 225.

⁴ *Ex parte Jackson*, 96 U. S. 732, 24 L. ed. 877; *In re Rapier*, 143 U. S. 133, 12 S. Ct. 374, 36 L. ed. 93.

⁵ *Weeber v. United States*, 62 Fed. 741; *Hoover v. McChesney*, 81 Fed. 478; *In re Henry*, 123 U. S. 375, 8 S. Ct. 142, 31 L. ed. 174; *Ex parte De Bara*, 179 U. S. 322, 21 S. Ct. 110, 45 L. ed. 207.

⁶ *In re Rapier*, 143 U. S. 133, 12 S. Ct. 374, 36 L. ed. 93; *Horner v. United States*, 143 U. S. 213, 12 S. Ct. 409, 36 L. ed. 126; *S. C.*, 143 U. S. 578, 12 S. Ct. 525, 36 L. ed. 266; *France v. United States*, 164 U. S. 682, 17 S. Ct. 219, 41 L. ed. 595; *In re Jackson*, 14 Blatchf. 245, Fed. Cas. No. 7124; *Enterprise Sav. Assn. v. Zumstein*, 67 Fed. 1005.

⁷ *Ex parte Jackson*, 96 U. S. 736, 24 L. ed. 877; *Rosen v. United States*, 161 U. S. 42, 16 S. Ct. 434, 40 L. ed. 606; *United States v. Bennett*, 16 Blatchf. 343, Fed. Cas. No. 14,571; *United States v. Loftis*, 8 Saw. 197, 12 Fed. 674.

⁸ *In re Rapier*, 143 U. S. 133, 12 S. Ct. 374, 36 L. ed. 93; *Horner*

was not prohibited prior to the grant of this power, abridge the power.⁹ The punishment of depredations on the mails or obstructions to the service is an incident of this power.¹⁰ The states have concurrent power to punish highway robbery of the mails,¹¹ and to punish the offense of opening letters addressed to another.¹² Congress may confer jurisdiction on state courts to punish offenses under the postal laws.¹³

Post-roads.

The power to establish post-roads was given to enable the general government to make, repair, keep open, and improve roads whenever necessary to effectuate the satisfactory transportation of mail; it is plenary and embraces everything necessary and proper to that end.¹⁴ The power comprehends such roads as are regularly laid out by authority of the states or by counties under state laws.¹⁵ The theory that the power to establish post-roads is exhausted by the designation of roads on which the mails are to be transported¹⁶ has been overruled, and the power of the United States to construct highways con-

v. *United States*, 143 U. S. 213, 12 S. Ct. 409, 36 L. ed. 126; S. C., 143 U. S. 578, 12 S. Ct. 525, 36 L. ed. 266; *Harmon v. United States*, 50 Fed. 922; and see *State v. Van Wye*, 136 Mo. 236, 58 Am. St. Rep. 631, 37 S. W. 940.

⁹ *In re Rapier*, 143 U. S. 134, 12 S. Ct. 374, 36 L. ed. 93; *In re Jackson*, 14 Blatchf. 245, Fed. Cas. No. 7124.

¹⁰ *United States v. Kirby*, 7 Wall. 485, 19 L. ed. 278; *In re Rapier*, 143 U. S. 134, 12 S. Ct. 374, 36 L. ed. 93; *In re Deba*, 158 U. S. 581, 15 S. Ct. 900, 39 L. ed. 1092; *Sturtevant v. Alton*, 3 McLean, 393, Fed. Cas. No. 13,580; *United States v. Rhodes*, 1 Abb. U. S. 50, Fed. Cas. No. 13,151; *United States v. McCready*, 11 Fed. 225.

¹¹ *Houston v. Moore*, 5 Wheat. 34, 5 L. ed. 19.

¹² *In re Noah*, 3 City H. Rec. 13.

¹³ *State v. Wells*, 2 Hill, 687. Contra, *State v. McBride*, 1 Rice, 400.

¹⁴ *Dickey v. Maysville etc. Co.*, 7 Dana, 113; *Searight v. Stokes*, 3 How. 151, 11 L. ed. 537.

¹⁵ *Cleveland etc. Co. v. Franklin Canal Co.*, Fed. Cas. No. 2890; *Pennsylvania v. Wheeling etc. Br. Co.*, 18 How. 421, 15 L. ed. 435; *Dickey v. Maysville etc. Co.*, 7 Dana, 113.

¹⁶ *United States v. Railroad Br. Co.*, 6 McLean, 517, Fed. Cas. No. 16,114.

necting the several states, or to authorize corporations to do so, asserted;¹⁷ but Congress cannot declare a state highway to be a post-road and give anyone authority to use it, without the consent of the state or owner, or without compensation.¹⁸ The power of Congress in this respect must keep pace with and adapt itself to new developments; accordingly, Congress may grant rights to telegraph companies over post-roads, whether on the public domain or not.¹⁹ Letter routes established in cities are to be deemed post-roads for the purposes of an act imposing penalties for carrying mailable matter.²⁰

¹⁷ *California v. Central Pac. R. R.*, 127 U. S. 39, 8 S. Ct. 1073, 32 L. ed. 150; *Luxton v. North River Br. Co.*, 153 U. S. 529, 14 S. Ct. 891, 38 L. ed. 808.

¹⁸ *Dickey v. Maysville etc. Co.*, 7 Dana, 113.

¹⁹ *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 12, 24 L. ed. 708; *Western Union Tel. Co. v. Mayor*, 38 Fed. 560.

²⁰ *Blackham v. Gresham*, 16 Fed. 609; *United States v. Eason*, 18 Fed. 590.

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Extent of Power.

Under the power thus conferred, Congress may grant to authors and inventors, rights which are coextensive with the territory of the United States.¹ But the rights thus conferred are domestic in character and are confined within that territory;² they are derived exclusively from acts of Congress, can be had only in the manner prescribed, and cannot go beyond them.³ The power to protect writings and inventions refers to fruits of intellectual labor and does not extend to the protection of trademarks;⁴ its exercise is limited to authors and inventors.^{4a} It is for Congress to determine for what time and under what circumstances protection shall be granted.⁵ While rights are to be secured for but a limited time,⁶ Congress may extend the term upon the expiration of the time originally specified,⁷ and in doing so protect the rights of pur-

¹ *Stevens v. Gladding*, 17 How. 451, 15 L. ed. 155; *Ager v. Murray*, 105 U. S. 130, 26 L. ed. 942; *Carver v. Peck*, 131 Mass. 294; *Wilson v. Martin-Wilson etc. Co.*, 151 Mass. 520, 24 N. E. 786, 8 L. R. A. 309.

² *Brown v. Duchesne*, 19 How. 198, 199, 15 L. ed. 595.

³ *Shaw v. Cooper*, 7 Pet. 319, 8 L. ed. 689; *Brown v. Duchesne*, 19 How. 195, 15 L. ed. 595; *Banks v. Manchester*, 128 U. S. 252, 9 S. Ct. 36, 32 L. ed. 425.

⁴ *Trademark Cases*, 100 U. S. 94, 25 L. ed. 550; *Higgins v. Keuffel*, 140 U. S. 431, 11 S. Ct. 732, 35 L. ed. 475; *Schumacher v. Schweneke*, 26 Fed. 818, 819; *Liedersdorf v. Flint*, 8 Biss. 327, Fed. Cas. No. 8219.

^{4a} *Livingston v. Van Ingen*, 9 Johns. 507.

⁵ *Evans v. Jordan*, 9 Cr. 199, 3 L. ed. 704; *Jordan v. Dobson*, 4 4 Fish. 232, 2 Abb. U. S. 398, Fed. Cas. No. 1519; *Blanchard v. Sprague*, 3 Sum. 535, 2 Story, 164, Fed. Cas. No. 1518.

⁶ *Livingston v. Van Ingen*, 9 Johns. 509.

⁷ *Evans v. Jordan*, 9 Cr. 203, 3 L. ed. 704; *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559; *Blanchard's G. S. Fact. v. Warner*, 1 Blatchf. 258, Fed. Cas. No. 1521; *Jordan v. Dobson*, 4 Fish. 232, 2 Abb. U. S. 398, Fed. Cas. No. 7519.

chasers and assignees,⁸ and this may be done by special act.⁹ Congress may modify rights under an existing patent, provided vested property rights are not thereby impaired.¹⁰

The power of Congress in relation to patents and copyrights, when exercised, is exclusive.¹¹ There is a clear distinction, however, between the right of property in the physical substance which is the fruit of an invention, and the right in the invention itself,¹² and between a copyright and the particular form which the author's production ultimately takes.¹³ Accordingly, while a state cannot tax patent rights and copyrights as such,¹⁴ or regulate the sale of the rights themselves,¹⁵ it may tax the articles manufactured or produced under the right protected by Congress,¹⁶ and may regulate sales of such articles;¹⁷ all rights conferred under this clause must be exercised

⁸ *Bloomer v. McQuewan*, 14 How. 549, 14 L. ed. 532; *Bloomer v. Millinger*, 1 Wall. 350, 17 L. ed. 581; *Eunson v. Dodge*, 18 Wall. 416, 21 L. ed. 766; *Blanchard's G. S. Fact. v. Warner*, 1 Blatchf. 258, Fed. Cas. No. 1521.

⁹ *Bloomer v. McQuewan*, 14 How. 548, 14 L. ed. 532; *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559.

¹⁰ *McClurg v. Kingsland*, 1 How. 206, 11 L. ed. 102.

¹¹ *Brown v. Duchesne*, 19 How. 195, 15 L. ed. 595; *In re Robinson*, 2 Biss. 309, Fed. Cas. No. 11,932; *Woollen v. Banker*, 2 Flipp. 33, Fed. Cas. No. 18,030; *Cranson v. Smith*, 37 Mich. 309; *State v. Lockwood*, 43 Wis. 403; *Crittenden v. White*, 23 Minn. 24, 23 Am. Rep. 676; *Wilch v. Phelps*, 14 Neb. 134, 15 N. W. 362; *Hollida v. Hunt*, 70 Ill. 111, 22 Am. Rep. 65. But see *Tod v. Wick Bros.*, 30 Ohio St. 370; *Haskell v. Jones*, 86 Pa. St. 173.

¹² *Patterson v. Kentucky*, 97 U. S. 506, 24 L. ed. 1115; *Belknap v. Schild*, 161 U. S. 24, 16 S. Ct. 448, 40 L. ed. 599; *Commonwealth v. Petty*, 96 Ky. 454, 29 S. W. 292, 29 L. R. A. 786.

¹³ *Holmes v. Hurst*, 174 U. S. 86, 19 S. Ct. 606, 43 L. ed. 904; *Yuengling v. Schill*, 20 Blatchf. 452, 12 Fed. 97.

¹⁴ *In re Sheffield*, 64 Fed. 834; *People v. Roberts*, 159 N. Y. 75, 53 N. E. 686, 45 L. R. A. 126.

¹⁵ *Castle v. Hutchinson*, 25 Fed. 394; *In re Robineon*, 2 Biss. 309, Fed. Cas. No. 11,932; *Crittenden v. White*, 23 Minn. 24, 23 Am. Rep. 676; *Wilch v. Phelps*, 14 Neb. 134, 15 N. W. 362.

¹⁶ *Webber v. Virginia*, 103 U. S. 344, 26 L. ed. 565.

¹⁷ *Patterson v. Kentucky*, 97 U. S. 505, 24 L. ed. 1115; *In re Brosnahan*, 4 McCrary, 6, 18 Fed. 65; *Palmer v. State*, 39 Ohio St. 239, 48 Am. Rep. 431; *Reeves v. Corning*, 51 Fed. 784; *Breechbill v.*

in subordination to proper police regulations established by the states.¹⁸ The exemption of patent rights from taxation does not extend to stock of corporations issued in consideration of the exclusive right to use patented articles; such stock does not constitute an investment in patent rights,¹⁹ such as has been declared to be exempt.²⁰

Copyrights.

A copyright is an incorporeal right to print a set of intellectual ideals, or modes of thinking, communicated in a set of words or sentences, and modes of expression,²¹ and "writings," as here used means literary productions, and includes all forms by which an author's ideas are given visible expression.²² The word "copyright" is to be construed with reference to the words of the constitution, "to promote the progress of science and the useful arts."²³ This phrase fixes the standard by which the right to protection is to be judged, and makes anything which is the representative of original intellectual conceptions of an author the subject of copyright.²⁴ So orna-

Randall, 102 Ind. 529, 52 Am. Rep. 696, 1 N. E. 363; *Mason v. McLeod*, 57 Kan. 109, 57 Am. St. Rep. 329, 45 Pac. 77, 41 L. R. A. 548.

¹⁸ *Patterson v. Kentucky*, 97 U. S. 505, 24 L. ed. 1115; *Webber v. Virginia*, 103 U. S. 344, 26 L. ed. 565; *In re Brosnahan*, 4 McCrary, 6, 18 Fed. 65; *State v. Telephone Co.*, 36 Ohio St. 227, 38 Am. Rep. 583.

¹⁹ *Crown Cork etc. Co. v. State*, 87 Md. 699, 67 Am. St. Rep. 375, 40 Atl. 1076; *Commonwealth v. Telegraph Co.*, 145 Pa. St. 127, 27 Am. St. Rep. 679, 22 Atl. 842; *Commonwealth v. Electric Light Co.*, 145 Pa. St. 140, 27 Am. St. Rep. 684, 22 Atl. 846.

²⁰ *Commonwealth v. Westinghouse Electric Co.*, 151 Pa. St. 265, 24 Atl. 1107, 1111; *Commonwealth v. Westinghouse Air Brake Co.*, 151 Pa. St. 276, 24 Atl. 1111; *Commonwealth v. Philadelphia Co.*, 157 Pa. St. 527, 27 Atl. 378; *Commonwealth v. Edison Co.*, 157 Pa. St. 529, 37 Am. St. Rep. 747, 27 Atl. 379. *Contra*, *People v. Campbell*, 138 N. Y. 543, 34 N. E. 370, 20 L. R. A. 453.

²¹ *Holmes v. Hurst*, 174 U. S. 86, 19 S. Ct. 606, 43 L. ed. 904.

²² *Burrows etc. Lith. Co. v. Sarony*, 111 U. S. 58, 4 S. Ct. 279, 28 L. ed. 349; *Press Pub. Co. v. Falk*, 59 Fed. 326; *Henderson v. Tompkins*, 60 Fed. 763; *Workmeister v. Springer Lith. Co.*, 63 Fed. 810.

²³ *Baker v. Selden*, 101 U. S. 105, 25 L. ed. 841.

²⁴ *Burrow etc. Lith. Co. v. Sarony*, 111 U. S. 58, 4 S. Ct. 279, 28

mental designs or pictorial illustrations addressed to the taste may be copyrighted,²⁵ but not a mere illustrated catalogue²⁶ or a label.²⁷ In the United States, copyright exists only by virtue of federal statutes and can be had only in the manner prescribed thereby; it cannot be sustained as a right at common law.²⁸ Copyright protects the intellectual production of the author only, and not the particular form which such production ultimately takes,²⁹ and an author can have no exclusive property in a published work except under some act of Congress.³⁰ Accordingly, the copyright of a system of bookkeeping confers no exclusive right to account books ruled and arranged as illustrated therein;³¹ nor does the copyright of a treatise on medicine or mathematics give an exclusive right to use the methods set forth;³² nor the copyright of a map entitle the author to the exclusive use of the signs and key adopted to render delineations intelligible.³³

All products of intellectual labor, printed and first published in the United States, may be protected under this clause;³⁴

L. ed. 349; *Thornton v. Schreiber*, 124 U. S. 613, 8 S. Ct. 618, 31 L. ed. 577; *Schumacher v. Schwenke*, 23 Blatchf. 377, 25 Fed. 468.

²⁵ *Baker v. Selden*, 101 U. S. 107, 25 L. ed. 841; *Bleistein v. Donaldson Lith. Co.*, 188 U. S. 239, 23 S. Ct. 298, 47 L. ed. 460.

²⁶ *J. L. Mott Iron Works v. Clow*, 83 Fed. 318.

²⁷ *Higgins v. Keuffel*, 140 U. S. 430, 11 S. Ct. 731, 35 L. ed. 470.

²⁸ *Wheaton v. Peters*, 8 Pet. 661, 8 L. ed. 1055; *Banks v. Manchester*, 128 U. S. 252, 9 S. Ct. 39, 32 L. ed. 425; *Thompson v. Hubbard*, 131 U. S. 151, 9 S. Ct. 720, 33 L. ed. 76; *Boucicault v. Hart*, 13 Blatchf. 50, Fed. Cas. No. 1692; *Donnelly v. Ivers*, 20 Blatchf. 383, 18 Fed. 593; *Crowe v. Aiken*, 2 Biss. 214, Fed. Cas. No. 3441.

²⁹ *Holmes v. Hurst*, 174 U. S. 89, 19 S. Ct. 606, 43 L. ed. 904.

³⁰ *Wheaton v. Peters*, 8 Pet. 591, 8 L. ed. 1055; *Dudley v. Mayhew*, 3 N. Y. 12.

³¹ *Baker v. Selden*, 101 U. S. 107, 25 L. ed. 844.

³² *Baker v. Selden*, 101 U. S. 103, 25 L. ed. 841; *Simms v. Stanton*, 75 Fed. 10.

³³ *Perris v. Hexamer*, 99 U. S. 676, 25 L. ed. 308.

³⁴ *Wheaton v. Peters*, 8 Pet. 591, 8 L. ed. 1055; *Jollie v. Jacques*, 1 Blatchf. 618, Fed. Cas. No. 7437; *Clayton v. Stone*, 2 Paine, 283, Fed. Cas. No. 2872; *Binns v. Woodruff*, 4 Wash. C. C. 48, Fed. Cas. No. 1424.

e. g., original writings,³⁵ ornamental designs or pictorial illustrations,³⁶ photographs,³⁷ maps.³⁸ Any person, however, may express truths of a science, or explain and use methods of art which are the common property of the race.³⁹ Judges have no proprietorship in their opinions, which are free to all and not the subject of copyright;⁴⁰ nor can a reporter of law reports copyright opinions, syllabi, and statements of cases prepared by the judges,⁴¹ but a reporter is an author to the extent of his own compositions in the reports and as to such matter is entitled to copyright.⁴² A state is not a "person" entitled to protection under the copyright laws.⁴³ This clause does not authorize the protection of a composition which is grossly indecent and tends to corrupt the morals of the people.⁴⁴ A series of photographs arranged for use in a machine so as to produce a panoramic effect are not entitled to copyright.⁴⁵ A newspaper in its entirety is not the subject of a general copyright.⁴⁶

It seems that in the absence of congressional legislation upon this subject the states may protect literary productions,⁴⁷ but

³⁵ *Higgins v. Keuffel*, 140 U. S. 430, 11 S. Ct. 731, 35 L. ed. 470; *Baker v. Selden*, 101 U. S. 102, 25 L. ed. 841; *Holmes v. Hurst*, 174 U. S. 85, 19 S. Ct. 606, 43 L. ed. 904.

³⁶ *Baker v. Selden*, 101 U. S. 103, 25 L. ed. 841.

³⁷ *Burrows etc. Lith. Co. v. Sarony*, 111 U. S. 58, 4 S. Ct. 279, 28 L. ed. 349, affirming 17 Fed. 591; *Thornton v. Schreiber*, 124 U. S. 613, 8 S. Ct. 618, 31 L. ed. 577, affirming 17 Fed. 603; *Press Pub. Co. v. Falk*, 59 Fed. 324.

³⁸ *Perris v. Hexamer*, 99 U. S. 676, 25 L. ed. 308.

³⁹ *Baker v. Selden*, 101 U. S. 100, 25 L. ed. 841.

⁴⁰ *Banks v. Manchester*, 128 U. S. 253, 9 S. Ct. 39, 32 L. ed. 425.

⁴¹ *Banks v. Manchester*, 23 Fed. 145; *West Pub. Co. v. Lawyer's Co-op. etc. Co.*, 64 Fed. 364, 25 L. R. A. 441.

⁴² *Callaghan v. Myers*, 128 U. S. 647, 9 S. Ct. 184, 32 L. ed. 547; *Little v. Gould*, 2 Blatchf. 364, Fed. Cas. No. 8395; *Howell v. Miller*, 91 Fed. 138.

⁴³ *Banks v. Manchester*, 128 U. S. 253, 9 S. Ct. 39, 32 L. ed. 425.

⁴⁴ *Martinetti v. Maguire*, Deady, 216, 1 Abb. U. S. 356, Fed. Cas. No. 9173.

⁴⁵ *Edison v. Lubin*, 119 Fed. 993.

⁴⁶ *Tribune Co. v. Associated Press*, 116 Fed. 126.

⁴⁷ *Passenger Cases*, 7 How. 365, 12 L. ed. 702; *Moore v. Illinois*,

a state can in no way interfere with copyrights acquired under federal laws.⁴⁸

Patents.

The power of Congress in relation to patents is plenary,⁴⁹ and it cannot be limited, controlled, or even exercised by the states.⁵⁰ There is no restriction upon Congress as to the time for which protection shall be granted,⁵¹ nor as to the nature of the invention which shall be subject to patent; all that is required is that there be an invention.⁵² The purpose of this clause is to "promote the progress of science and useful arts";⁵³ to reward substantial discoveries.⁵⁴

The language of the clause limits Congress to the protection

14 How. 20, 14 L. ed. 306; *Briggs v. Johnson Co.*, 1 Dill. 151, Fed. Cas. No. 1872; *Livingstone v. Van Ingen*, 9 Johns. 507.

⁴⁸ *Little v. Gould*, 2 Blatchf. 165, Fed. Cas. No. 8394.

⁴⁹ *Evans v. Eaton*, 3 Wheat. 454, 4 L. ed. 433, 7 Wheat. 356, 5 L. ed. 472; *Evans v. Hettich*, 7 Wheat. 453, 5 L. ed. 496; *McClurg v. Kingsland*, 1 How. 202, 11 L. ed. 102; *Brown v. Duchesne*, 19 How. 195, 15 L. ed. 595; *Blanchard v. Sprague*, 3 Sum. 541, Fed. Cas. No. 1518.

⁵⁰ *Woolen v. Banker*, 2 Flipp. 33, Fed. Cas. No. 18,030; *Ex parte Robinson*, 2 Biss. 309, Fed. Cas. No. 11,932; *Helm v. First Nat. Bank*, 43 Ind. 167, 13 Am. Rep. 395; *Grover etc. Co. v. Butler*, 53 Ind. 454, 21 Am. Rep. 200; *Cranson v. Smith*, 37 Mich. 309; *Hollida v. Hunt*, 70 Ill. 111, 22 Am. Rep. 65.

⁵¹ *Evans v. Jordan*, 9 Cr. 199, 3 L. ed. 704; *Jordan v. Dobson*, 4 Fish. 232, 2 Abb. U. S. 398, Fed. Cas. No. 7519; *Blanchard v. Sprague*, 3 Sum. 535, 2 Story, 164.

⁵² *Evans v. Jordan*, 9 Cr. 199, 3 L. ed. 704; *Jordan v. Dobson*, 4 Fish. 232, 2 Abb. U. S. 398, Fed. Cas. No. 7519; *Blanchard v. Sprague*, 2 Story, 164, 3 Sum. 535.

⁵³ *Grant v. Raymond*, 6 Pet. 218, 8 L. ed. 376; *Hogg v. Emerson*, 6 How. 486, 2 L. ed. 505; *Brooks v. Fiske*, 15 How. 223, 14 L. ed. 665; *Blanchard v. Sprague*, 2 Story, 164, 3 Sum. 535.

⁵⁴ *Atlantic Works v. Brady*, 107 U. S. 200, 2 S. Ct. 295, 27 L. ed. 438; *Slawson v. Grand St. E. R.*, 107 U. S. 655, 2 S. Ct. 663, 27 L. ed. 576.

of "useful" inventions.⁵⁵ "Invention" implies originality,⁵⁶ novelty,⁵⁷ the finding out, contriving or creating something which did not exist before.⁵⁸ The utility of a device cannot entitle one to a patent; however useful it may be, if not new, it is not patentable.⁵⁹ An invention must be the product of the inventor's mind,⁶⁰ and not the result of mere mechanical skill,⁶¹ but a mental conception not reduced to definite physical representation is not an invention.⁶²

The law authorizing the grant of patents for designs was intended to encourage the decorative arts, and contemplated appearance rather than utility;⁶³ but utility is an element for

⁵⁵ *Seymour v. Osborne*, 11 Wall. 549, 20 L. ed. 33; *O'Reilly v. Morse*, 15 How. 119, 14 L. ed. 601; *Strobridge v. Lindsay*, 2 Fed. 695; *Gottfried v. Phillip Best B. Co.*, 10 Fed. Cas. 851; *Judson v. Bradford*, 14 Fed. Cas. 9.

⁵⁶ *Blake v. Stafford*, 3 Fish. 305, 6 Blatchf. 195, Fed. Cas. No. 1504.

⁵⁷ *Pennock v. Dialogue*, 2 Pet. 20, 7 L. ed. 327.

⁵⁸ *Le Roy v. Tatham*, 14 How. 177, 14 L. ed. 367; *Aron v. Manhattan Ry.*, 132 U. S. 90, 10 S. Ct. 24, 33 L. ed. 272; *Busell Trimmer Co. v. Stevens*, 137 U. S. 433, 11 S. Ct. 154, 34 L. ed. 719; *Magin v. Karle*, 150 U. S. 392, 14 S. Ct. 155, 37 L. ed. 1118; *Ransom v. Mayor*, 1 Fish. 264, Fed. Cas. No. 11,573; *Conover v. Roach*, 4 Fish. 16, Fed. Cas. No. 3125; *Union Gas Co. v. Doak*, 88 Fed. 89.

⁵⁹ *Rubber-Tip Pencil Co. v. Howard*, 20 Wall. 507, 22 L. ed. 410; *Phillips v. Detroit*, 111 U. S. 608, 4 S. Ct. 583, 28 L. ed. 532; *Farmers' Mfg. Co. v. Spruks Mfg. Co.*, 119 Fed. 594.

⁶⁰ *Smith v. Nichols*, 21 Wall. 118, 22 L. ed. 566; *Packing Co. v. Provision Cos.*, 105 U. S. 572, 26 L. ed. 1172; *Pitts v. Hall*, 2 Blatchf. 234, Fed. Cas. No. 11,192.

⁶¹ *Collar Co. v. Van Dusen*, 23 Wall. 563, 23 L. ed. 128; *Rechen-dorfer v. Faber*, 92 U. S. 356, 23 L. ed. 719; *King v. Gallun*, 109 U. S. 101, 3 S. Ct. 85, 27 L. ed. 870; *Hollister v. Benedict etc. Mfg. Co.*, 113 U. S. 73, 5 S. Ct. 717, 28 L. ed. 901; *Weir v. Morden*, 125 U. S. 108, 8 S. Ct. 869, 31 L. ed. 645; *Potts v. Creager*, 155 U. S. 608, 15 S. Ct. 194, 39 L. ed. 275; *Dodge Mfg. Co. v. Ohio etc. Works*, 101 Fed. 584.

⁶² *Clark Thread Co. v. Williamantic Linen Co.*, 140 U. S. 489, 11 S. Ct. 846, 35 L. ed. 521; *Wicke v. Ostrum*, 103 U. S. 469, 26 L. ed. 409; *Morley Co. v. Lancaster*, 23 Fed. 344; *Campbell Press Co. v. Duplex Press Co.*, 86 Fed. 320.

⁶³ *Gorham Co. v. White*, 14 Wall. 524, 20 L. ed. 731; *Wood v. Dolbey*, 19 Blatchf. 215, 7 Fed. 477; *Smith v. Stewart*, 55 Fed. 482; *Pelouze Scale etc. Co. v. American Cutlery Co.*, 102 Fed. 916; *Bevin*

consideration in determining the validity of such a patent.⁶⁴ Patents for designs, like other patents, must show originality and inventive faculty.⁶⁵

The protection accorded by Congress under this clause is exclusively to the inventor;⁶⁶ by his patent he acquires property in his invention which is entitled to protection to the same extent as any other property,⁶⁷ and as capable of sale or assignment.⁶⁸ Accordingly, no one is entitled to a patent unless he is the inventor or can show a legal title derived from the inventor, or by operation of law.⁶⁹ The right of a patentee under his letters patent is exclusive of the government as well as all others,⁷⁰ and, like any other property, cannot be appropriated without compensation.⁷¹ A patent is to be construed liberally, "so as to promote the progress of the useful arts,"⁷² and the object of the patent laws should not be defeated by too strict an adherence to the letter of the statute,⁷³

Bros. Mfg. Co. v. Starr Bros. Bell Co., 114 Fed. 362; *Eaton v. Lewis*, 115 Fed. 635.

⁶⁴ *Smith v. Whitman Co.*, 148 U. S. 678, 13 S. Ct. 770, 37 L. ed. 606; *Untermeyer v. Freund*, 37 Fed. 345.

⁶⁵ *Smith v. Whitman Co.*, 148 U. S. 679, 13 S. Ct. 770, 37 L. ed. 606; *Eclipse Mfg. Co. v. Holland*, 62 Fed. 468; *Sagendorph v. Hughes*, 95 Fed. 479; *Perry v. Haskins*, 111 Fed. 1002.

⁶⁶ *In re Brosnahan*, 18 Fed. 62.

⁶⁷ *Seymour v. Osborne*, 11 Wall. 533, 20 L. ed. 33; *Consolidated Fruit Jar Co. v. Wright*, 94 U. S. 96, 24 L. ed. 68; *Camineyer v. Newton*, 94 U. S. 226, 24 L. ed. 72.

⁶⁸ *Ager v. Murray*, 105 U. S. 128, 26 L. ed. 942.

⁶⁹ *Agawam Co. v. Jordan*, 7 Wall. 602, 19 L. ed. 177; *Standard etc. Co. v. Peters etc. Co.*, 77 Fed. 645.

⁷⁰ *Hollister v. Benedict etc. Mfg. Co.*, 113 U. S. 67, 5 S. Ct. 717, 28 L. ed. 901; *Belknap v. Schild*, 161 U. S. 16, 16 S. Ct. 443, 40 L. ed. 599.

⁷¹ *United States v. Burns*, 12 Wall. 252, 20 L. ed. 388; *James v. Campbell*, 104 U. S. 358, 26 L. ed. 786; *United States v. Palmer*, 129 U. S. 271, 9 S. Ct. 104, 32 L. ed. 442; *Belknap v. Schild*, 161 U. S. 16, 16 S. Ct. 443, 40 L. ed. 599; *Campbell v. James*, 17 Blatchf. 54, Fed. Cas. No. 2361; *Head v. Porter*, 48 Fed. 487; *McKeever v. United States*, 14 Ct. of Cl. 396.

⁷² *Winans v. Dunsmead*, 15 How. 341, 14 L. ed. 717.

⁷³ *Hogg v. Emerson*, 6 How. 486, 12 L. ed. 505; *Topliff v. Topliff*,

especially where an invention is a pioneer in the particular art or science,⁷⁴ and while the courts should hesitate to give a construction unjust to the public and individuals,⁷⁵ yet a patent law which is constitutional must be enforced without regard to considerations of policy or justice.⁷⁶

Patent laws cannot displace the police powers of the states,⁷⁷ and the right to manufacture and sell must be exercised in compliance with state laws.⁷⁸ So a patent for a plan for constructing and drawing lotteries does not authorize the establishment of a lottery contrary to state laws,⁷⁹ nor does a patent for a medicine confer a right to prescribe the medicine.⁸⁰ Vendors of patented articles are bound to observe state Sunday laws.⁸¹ The fact that a telephone is patented does not prevent a state from requiring the company using it to establish uniform rates.⁸²

145 U. S. 171, 12 S. Ct. 825, 36 L. ed. 658; *Keystone Mfg. Co. v. Adams*, 151 U. S. 145, 14 S. Ct. 295, 38 L. ed. 103; *McMichael etc. Co. v. Stafford*, 105 Fed. 380.

⁷⁴ *Morley Machine Co. v. Lancaster*, 129 U. S. 286, 9 S. Ct. 299, 32 L. ed. 715; *Sessions v. Romadka*, 145 U. S. 45, 12 S. Ct. 799, 36 L. ed. 609; *Royer v. Coupe*, 146 U. S. 531, 13 S. Ct. 166, 36 L. ed. 1073; *The Roller Mill Patent*, 156 U. S. 269, 15 S. Ct. 333, 39 L. ed. 417; *Lehigh Valley R. R. v. Kearney*, 158 U. S. 476, 15 S. Ct. 871, 39 L. ed. 1055.

⁷⁵ *Wilson v. Rousseau*, 4 How. 680, 11 L. ed. 1141.

⁷⁶ *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559.

⁷⁷ *Webber v. Virginia*, 103 U. S. 347, 26 L. ed. 565; *In re Brosnahan*, 4 McCrary, 7, 18 Fed. 65; *Reeves v. Corning*, 51 Fed. 786; *Mason v. McLeod*, 57 Kan. 109, 57 Am. St. Rep. 329, 45 Pac. 76, 41 L. R. A. 549.

⁷⁸ *Patterson v. Kentucky*, 97 U. S. 505, 24 L. ed. 1115.

⁷⁹ *Vaunini v. Paine*, 1 Harr. 65.

⁸⁰ *Jordan v. Dayton*, 4 Ohio, 294.

⁸¹ *People v. Russel*, 49 Mich. 619, 43 Am. Rep. 479, 14 N. W. 369.

⁸² *State v. Telegraph Co.*, 47 Fed. 635; *Central etc. Tel. Co. v. Bradbury*, 106 Ind. 9, 5 N. E. 725.

9. To constitute tribunals inferior to the Supreme Court;

Extent of Power.

Under this clause Congress may establish such inferior courts as it sees fit.¹ The creation of such courts by Congress does not, ipso facto, invest them with the judicial power delegated by the constitution;² legislation is necessary to give them judicial power,³ and the distribution of this power is entirely within the control of Congress except in the cases especially enumerated in the constitution.⁴

Jurisdiction may be conferred in all cases involving questions to which the constitution extends judicial power although other questions may be involved therein,⁵ and, in some instances, jurisdiction may be withdrawn even in pending cases.⁶ It rests entirely with Congress to determine at what time, and under what conditions, the power may be invoked.⁷ State courts are not inferior courts within the meaning of this clause;⁸ the courts contemplated are those only which exist under the constitution and laws of the United States,⁹ and Con-

¹ *Stuart v. Laird*, 1 Cr. 309, 2 L. ed. 115; *United States v. Haynes*, 29 Fed. 696, 697.

² *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *Sheldon v. Sill*, 8 How. 449, 12 L. ed. 1147; *In re Sewing Machine Cos.*, 18 Wall. 357, 21 L. ed. 914; *United States v. New Bedford Br.*, 1 Wood. & M. 431, Fed. Cas. No. 15,867; *In re Cilley*, 58 Fed. 978.

³ *McClung v. Silliman*, 6 Wheat. 604, 5 L. ed. 840; *In re Barry*, 136 U. S. 609, note, 42 Fed. 122, Fed. Cas. No. 1059; *Cary v. Curtis*, 3 How. 245, 11 L. ed. 576; *Fountain v. Revenel*, 17 How. 384, 15 L. ed. 80.

⁴ *Johnson Co. v. Wharton*, 152 U. S. 260, 14 S. Ct. 152, 38 L. ed. 429.

⁵ *Osborne v. United States Bank*, 9 Wheat. 823, 6 L. ed. 204.

⁶ *Ex parte Yenger*, 8 Wall. 104, 19 L. ed. 332; *In re Hall*, 167 U. S. 42, 17 S. Ct. 725, 42 L. ed. 69.

⁷ *Gaines v. Fuentes*, 92 U. S. 18, 23 L. ed. 524; *Whelan v. Railroad Co.*, 35 Fed. 859.

⁸ *Ex parte Bollman*, 4 Cr. 97, 2 L. ed. 554.

⁹ *Houston v. Moore*, 5 Wheat. 27, 5 L. ed. 19.

gress cannot authoritatively confer jurisdiction upon state courts.¹⁰ Territorial courts are not inferior courts which Congress may establish under this clause;¹¹ such courts are created under the power to make all needful rules and regulations respecting territories.¹² The necessity for legislation to confer jurisdiction applies to criminal cases; the federal courts have no common-law jurisdiction of offenses.¹³ The power to establish courts and invest them with jurisdiction affords no pretext for the abrogation of established rules of property;¹⁴ hence, the decision of the supreme court of a state, as a rule of property, is binding on the federal courts.¹⁵

— Powers of States.

Federal and state courts are distinct and independent of each other in matters within their respective jurisdictions.¹⁶ State laws cannot confer jurisdiction upon federal courts,¹⁷ or in any way affect the jurisdiction conferred by Congress.¹⁸

¹⁰ *Stearns v. United States*, 2 Paine, 308, Fed. Cas. No. 13,341; *Morgan v. Dudley*, 18 B. Mon. 714, 68 Am. Dec. 739; *Davidson v. Champlin*, 7 Conn. 248; *Rushworth v. Judges*, 58 N. J. L. 98, 32 Atl. 744.

¹¹ *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 546, 7 L. ed. 242.

¹² *United States v. C. O. & G. R. R.*, 3 Okla. 451, 41 Pac. 745; *In re Dana*, 68 Fed. 901.*

¹³ *Ex parte Bollman*, 4 Cr. 93, 2 L. ed. 554; *United States v. Wiltberger*, 5 Wheat. 98, 5 L. ed. 37; *Jones v. United States*, 137 U. S. 211, 11 S. Ct. 80, 34 L. ed. 691; *Manchester v. Massachusetts*, 139 U. S. 262, 11 S. Ct. 559, 35 L. ed. 159.

¹⁴ *Suydam v. Williamson*, 24 How. 433, 16 L. ed. 742.

¹⁵ *Jackson v. Chew*, 12 Wheat. 162, 6 L. ed. 583; *Henderson v. Griffin*, 5 Pet. 155, 8 L. ed. 79; *Van Rensselaer v. Kearney*, 11 How. 318, 13 L. ed. 703; *Beauregard v. New Orleans*, 18 How. 502, 15 L. ed. 469; *Barrett v. Holmes*, 102 U. S. 655, 26 L. ed. 291; *Forsyth v. Hammond*, 166 U. S. 519, 17 S. Ct. 670, 41 L. ed. 1095.

¹⁶ *Taylor v. Carryl*, 20 How. 597, 15 L. ed. 1028; *Ruggles v. Simonton*, 3 Biss. 329, Fed. Cas. No. 12,120; *Gates v. Bucki*, 53 Fed. 966.

¹⁷ *Steamboat Orleans v. Phoebus*, 11 Pet. 184, 9 L. ed. 677; *Insurance Co. v. Morse*, 20 Wall. 453, 22 L. ed. 365; *Southern Pac. Co. v. Denton*, 146 U. S. 209, 13 S. Ct. 44, 36 L. ed. 942.

¹⁸ *United States v. Peters*, 5 Cr. 138, 3 L. ed. 53; *Beers v. Haugh-*

*See art. IV, § 3, cl. 2.

Forms of action and modes of proceeding in federal courts are matters for regulation by Congress,¹⁹ and when Congress has prescribed definite rules in matters of practice they are, to that extent, exclusive of state legislation upon the same matter.²⁰

ton, 9 Pet. 359, 9 L. ed. 145; Toland v. Sprague, 12 Pet. 330, 9 L. ed. 1093; Chicot Co. v. Sherwood, 148 U. S. 534, 13 S. Ct. 695, 37 L. ed. 546.

¹⁹ *Kearney v. Farmers' etc. Bank*, 16 Pet. 94, 10 L. ed. 897.

²⁰ *Southern Pac. Co. v. Denton*, 146 U. S. 209, 13 S. Ct. 44, 36 L. ed. 942.

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

Definition.

To define is to enumerate the crimes which shall constitute piracy,¹ but while Congress is given power to thus define piracy, it need not do so, in terms; reference to the law of nations for a definition is sufficient.² The act of Congress of April 30, 1890, gives to federal courts power to punish the offense of murder or robbery committed on board a foreign vessel by a citizen of the United States; on board a United States vessel by a foreigner; by a citizen or foreigner on board a piratical vessel.³

A piratical vessel is one which has thrown off its national character,⁴ and holds no commission from a sovereign state.⁵ Piracy committed by such a vessel, even against a foreign vessel, is punishable in the United States courts.⁶ The crime is one against all nations including the United States;⁷ pirates are the common enemies of mankind.⁸ Robbery or forcible depredation on the sea, *animus furandi*, is piracy.⁹ The word "piratical" in the act of 1819 imports an aggression unauthorized by the law of nations, hostile in its character, wanton and criminal in its commission, and without sanction from any foreign power.¹⁰ Thus maritime warfare of unrecognized rebels

¹ *United States v. Smith*, 5 Wheat. 158, 5 L. ed. 57.

² *United States v. Smith*, 5 Wheat. 158, 5 L. ed. 57; *United States v. Pirates*, 5 Wheat. 197, 5 L. ed. 64; and see *Crapo v. Kelly*, 16 Wall. 629, 21 L. ed. 438.

³ *United States v. Holmes*, 5 Wheat. 417, 5 L. ed. 122.

⁴ *United States v. Pirates*, 5 Wheat. 192, 5 L. ed. 64.

⁵ *Davison v. Sealskins*, 2 Paine, 333, Fed. Cas. No. 3661.

⁶ *United States v. Klintock*, 5 Wheat. 151, 5 L. ed. 557.

⁷ *Case of Jose Ferreira dos Santos*, 2 Brock. 507, Fed. Cas. No. 4016.

⁸ *The Marianna Flora*, 11 Wheat. 40, 6 L. ed. 405.

⁹ *United States v. Smith*, 5 Wheat. 193, 5 L. ed. 57; *United States v. Pirates*, 5 Wheat. 197, 5 L. ed. 64.

¹⁰ *United States v. The Malek Adhel*, 2 How. 232, 11 L. ed. 239.

is piratical.¹¹ Actual plunder is not necessary;^{11a} any molestation of third parties by insurgent vessels before the recognition of belligerency constitutes piracy.¹² Slave trade, not being contrary to the law of nations, is not piracy;¹³ but, on the other hand, native Africans unlawfully kidnaped cannot be deemed pirates if they take possession of the vessel to regain their liberty.¹⁴

Congress may provide for the punishment of mutiny,¹⁵ and of conspiracy to burn a ship.¹⁶

A statute punishing the counterfeiting of foreign securities is valid as punishing an offense against the law of nations.¹⁷

— High Seas.

According to the decisions of the English common-law courts, "high seas" means that portion of the sea which washes the open coast.¹⁸ A vessel lying in an open roadstead of a foreign country is upon the high seas.¹⁹ The term is used in contradistinction to landlocked tidewaters,²⁰ and means without the limits of any port.²¹ So a vessel upon a navigable river of a foreign

¹¹ *The Ambrose Light*, 25 Fed. 416; *United States v. Smith*, 27 Fed. Cas. 1135.

^{11a} *United States v. The Malek Adhel*, 2 How. 232, 11 L. ed. 239.

¹² *United States v. The Three Friends*, 167 U. S. 64, 17 S. Ct. 495, 41 L. ed. 897.

¹³ *The Antelope*, 10 Wheat. 121, 6 L. ed. 268.

¹⁴ *United States v. The Amistad*, 15 Pet. 593, 10 L. ed. 826.

¹⁵ *United States v. Kelly*, 11 Wheat. 418, 6 L. ed. 508; *United States v. Seagrist*, 4 Blatchf. 422, Fed. Cas. No. 16,245; *United States v. Almeida*, 24 Fed. Cas. 776; *United States v. Huff*, 13 Fed. 635.

¹⁶ *United States v. Cole*, 5 McLean, 513, Fed. Cas. No. 14,832.

¹⁷ *United States v. Arjona*, 120 U. S. 488, 7 S. Ct. 628, 30 L. ed. 728.

¹⁸ *Waring v. Clarke*, 5 How. 453, 12 L. ed. 226; *Morgan v. Nagash*, 40 La. Ann. 252, 3 South. 639; *People v. Supervisors*, 73 N. Y. 397.

¹⁹ *United States v. Pirates*, 5 Wheat. 200, 5 L. ed. 64.

²⁰ *United States v. Wilson*, 3 Blatchf. 439, Fed. Cas. No. 16,731.

²¹ *The Harriet*, 1 Story, 260, Fed. Cas. No. 6099; *United States v. Grush*, 5 Mason, 290, Fed. Cas. No. 15,268.

nation is not upon the "high seas."²² The Great Lakes are not "high seas" within the act punishing the burning of vessels.²³

²² *United States v. Wiltberger*, 5 Wheat. 104, 5 L. ed. 37; *Ex parte Byers*, 32 Fed. 406; *People v. Tyler*, 7 Mich. 216, 74 Am. Dec. 711.

²³ *Henry Miller's Case*, Brown Adm. 157, Fed. Cas. No. 9558.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

What Constitutes War.

War is the external contention, by force, between some of the members of two nations, authorized by the legitimate powers;¹ that state in which a nation prosecutes its right by force.² It may be general or limited,³ and may exist where one belligerent claims sovereign rights against the other; so where, insurrection becomes, by numbers and power, organized rebellion, it is civil war, in which both parties are conceded belligerent rights.⁴ The war of the Rebellion was conducted as if it were with a foreign enemy, and important rights were conceded to the insurgent states,⁵ and international law was applied to questions arising out of that war.⁶ The relations between the United States and France in 1800 constituted limited hostilities, amounting to a state of war.⁷

— Declaration.

A formal declaration is unnecessary; a recognition of a state of war by engaging in acts of hostility is sufficient.⁸ The Presi-

¹ *Bas v. Tingy*, 4 Dall. 40, 1 L. ed. 731.

² *Prize Cases*, 2 Black, 666, 667, 17 L. ed. 459; *Miller v. United States*, 11 Wall. 306, 20 L. ed. 135.

³ *Bas v. Tingy*, 4 Dall. 43, 1 L. ed. 731.

⁴ *Prize Cases*, 2 Black, 666, 667, 17 L. ed. 459.

⁵ *Coppell v. Hall*, 7 Wall. 554, 19 L. ed. 244; *Mutual etc. Co. v. Hillyard*, 37 N. J. L. 489.

⁶ *Ford v. Surget*, 97 U. S. 604, 24 L. ed. 1018; *Brown v. Hiatt*, 1 Dill. 381, Fed. Cas. No. 2011; *Phillips v. Hatch*, 1 Dill. 576, Fed. Cas. No. 11,094.

⁷ *Bas v. Tingy*, 4 Dall. 39-46, 1 L. ed. 731; *Talbot v. Seeman*, 1 Cr. 33, 2 L. ed. 15; *Clayton v. The Harmony*, 1 Pet. Adm. 78, Fed. Cas. No. 2871.

⁸ *Bas v. Tingy*, 4 Dall. 39, 1 L. ed. 731; *Talbot v. Seeman*, 1 Cr. 28, 2 L. ed. 15; *The Panama*, 176 U. S. 535, 20 S. Ct. 480, 44 L. ed. 577; *Griswold v. Waddington*, 16 Johns. 449.

dent has power to thus recognize the existence of a state of war.⁹ Such was the effect of the President's blockade proclamation of April 19, 1861, and the act of Congress of July 13, 1861;¹⁰ in fact, the President's proclamations marked the beginning of the war of the Rebellion.¹¹ Acts of one nation may be deemed by another to be tantamount to a declaration of war in advance of any formal action by either.¹²

— Power Conferred.

Congress alone has power to formally declare war,¹³ but where the President finds an actual state of war existing he may take the necessary steps in the absence of congressional action.¹⁴ The power was conferred upon Congress, not for purposes of aggression or aggrandizement, but to enable the general government to vindicate its own rights and those of its citizens,¹⁵ and it can never be presumed that a war declared by Congress is waged for purposes of conquest or the acquisition of territory,¹⁶ although the power carries with it the power to acquire territory by conquest.¹⁷ It includes the authority to use other means besides those indicated by the terms of the grant,¹⁸ and contemplates all means and any manner in which

⁹ Prize Cases, 2 Black, 668, 17 L. ed. 459; *Matthews v. McStea*, 91 U. S. 12.

¹⁰ *The William Bogaley*, 5 Wall. 406, 407, 18 L. ed. 583; *Matthews v. McStea*, 91 U. S. 9, 23 L. ed. 188; *Brown v. Hiatt*, 1 Dill. 381, Fed. Cas. No. 2011; *Philips v. Hatch*, 1 Dill. 576, Fed. Cas. No. 11,094.

¹¹ *Levy v. Stewart* 11 Wall. 253, 20 L. ed. 86; *The Protector*, 12 Wall. 702, 20 L. ed. 463.

¹² *The Pedro*, 175 U. S. 354, 20 S. Ct. 138, 44 L. ed. 195.

¹³ Prize Cases, 2 Black, 668, 17 L. ed. 459; *Perkins v. Rogers*, 35 Ind. 144, 9 Am. Rep. 654.

¹⁴ Prize Cases, 2 Black, 668-670, 17 L. ed. 459; *The Panama*, 176 U. S. 535, 20 S. Ct. 480, 44 L. ed. 577.

¹⁵ *Fleming v. Page*, 9 How. 614, 13 L. ed. 276.

¹⁶ *Fleming v. Page*, 9 How. 614, 13 L. ed. 276; *United States v. Castillero*, 2 Black, 355, 17 L. ed. 360; *American Ins. Co. v. Cotton*, 1 Pet. 542, 7 L. ed. 242; *Stewart v. Kahn*, 11 Wall. 507, 20 L. ed. 176.

¹⁷ *Sere v. Pitot*, 6 Cr. 332, 3 L. ed. 240; *Stewart v. Kahn*, 11 Wall. 507, 20 L. ed. 176; *Fleming v. Page*, 9 How. 614, 13 L. ed. 276.

¹⁸ Prize Cases, 2 Black, 670, 17 L. ed. 459.

war may be legitimately prosecuted.¹⁹ All acts tending to lessen an adversary's strength are lawful.²⁰

The confiscation of enemies' property may be provided for by Congress,²¹ but a declaration of war does not, ipso facto, work a confiscation of such property;²² positive law authorizing it is necessary,²³ and the power to pass such a law is exclusively in Congress.²⁴ The act of Congress emancipating the slaves of those aiding in rebellion was valid under this power.²⁵

The authority conferred by this clause extends to all legislation necessary to the prosecution of the war with vigor and success.²⁶ It is not limited to operations in the field and the dispersion of the enemy, but carries with it the power to prosecute war to a termination,²⁷ and to guard against its renewal.²⁸

¹⁹ *Miller v. United States*, 11 Wall. 305, 20 L. ed. 135; *Tyler v. Defrees*, 11 Wall. 345, 20 L. ed. 161.

²⁰ *Young v. United States*, 97 U. S. 60, 24 L. ed. 992; *Ford v. Surget*, 97 U. S. 605, 24 L. ed. 1018.

²¹ *Miller v. United States*, 11 Wall. 305, 20 L. ed. 135; *Tyler v. Defrees*, 11 Wall. 345, 20 L. ed. 161; *Mrs. Alexander's Cotton*, 2 Wall. 419, 17 L. ed. 915; *The Ned*, 1 Blatchf. Pr. Cas. 119, Fed. Cas. No. 10,078.

²² *Brown v. Brown*, 8 Cr. 123, 3 L. ed. 504; *Conrad v. Waples*, 96 U. S. 284, 24 L. ed. 721; *Briggs v. United States*, 143 U. S. 356, 12 S. Ct. 395, 36 L. ed. 180.

²³ *Conrad v. Waples*, 96 U. S. 284, 24 L. ed. 721; *Briggs v. United States*, 143 U. S. 356, 12 S. Ct. 395, 36 L. ed. 180; *United States v. Stevenson*, 3 Ben. 120, Fed. Cas. No. 16,396; *United States v. Shares of Stock*, 5 Blatchf. 237, Fed. Cas. No. 15,961; *Wagner v. The Juanita*, Newb. 358, Fed. Cas. No. 17,039; *McVeigh v. Bank*, 26 Gratt. 200; *Hedges v. Price*, 2 W. Va. 231, 94 Am. Dec. 516.

²⁴ *Brown v. United States*, 8 Cr. 123, 3 L. ed. 504; *The Parkhill*, 18 Fed. Cas. 1197; *Britton v. Butler*, 9 Blatchf. 462, Fed. Cas. No. 1903.

²⁵ *Buie v. Parker*, 63 N. C. 131; *Jacoway v. Denton*, 25 Ark. 625.

²⁶ *Ex parte Milligan*, 4 Wall. 139, 18 L. ed. 281.

²⁷ *Legal Tender Cases*, 12 Wall. 457, 20 L. ed. 287; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Kneedler v. Lane*, 45 Pa. St. 238.

²⁸ *Stewart v. Kahn*, 11 Wall. 507, 20 L. ed. 176; *White v. Hart*, 13 Wall. 646, 20 L. ed. 685; *Raymond v. Thomas*, 91 U. S. 715, 23 L. ed. 434.

To this end Congress may call the requisite forces into service,²⁹ and provide for the transportation of troops through all parts of the Union by the most expeditious routes;³⁰ may prohibit intercourse;³¹ may relax the ordinary rules of war by permitting a limited commercial intercourse with the enemy upon such conditions as it sees fit.³² So, also, Congress may suspend statutes of limitations during the existence of a rebellion.³³

— Letters of Marque.

Until Congress passes laws upon the subject of war and reprisals, no private citizen can enforce such rights,³⁴ and letters are strictly limited by the law under which they are issued and the instructions of the executive.³⁵ Letters obtained by fraud are inoperative.^{35a} Congress may commission privateers to make captures within United States waters as well as upon the high seas.³⁶

— Rules Concerning Captures.

The power to make these rules is not limited to captures on the high seas or on foreign territory; it extends to captures within the United States.³⁷ It is for Congress to determine what shall be subject to capture.³⁸ The power of Congress in respect to prizes is plenary,³⁹ and no one can have any interest in prizes captured except by permission of Congress.⁴⁰

²⁹ *Kneedler v. Lane*, 45 Pa. St. 238.

³⁰ *Crandall v. Nevada*, 6 Wall. 36, 18 L. ed. 745.

³¹ *Matthews v. McStea*, 91 U. S. 13, 23 L. ed. 188; *Phelps v. Sowles*, 19 Wend. 547.

³² *Hamilton v. Dillin*, 21 Wall. 97, 22 L. ed. 528.

³³ *Stewart v. Kahn*, 11 Wall. 507, 20 L. ed. 176; *Mayfield v. Richards*, 115 U. S. 142, 5 S. Ct. 1190, 29 L. ed. 334.

³⁴ *Brown v. United States*, 8 Cr. 153, 3 L. ed. 504.

³⁵ *The Thomas Gibbons*, 8 Cr. 428, 3 L. ed. 610.

^{35a} *The Experiment*, 8 Wheat. 264, 5 L. ed. 612.

³⁶ *The Joseph*, 8 Cr. 455, 456, 3 L. ed. 621.

³⁷ *Brown v. United States*, 8 Cr. 153, 3 L. ed. 504.

³⁸ *Lamar v. Browne*, 92 U. S. 187, 23 L. ed. 660.

³⁹ *The Hampton*, 5 Wall. 376, 18 L. ed. 646.

⁴⁰ *The Siren*, 13 Wall. 393, 20 L. ed. 505; *United States v. Steever*, 113 U. S. 754, 5 S. Ct. 769, 28 L. ed. 1133.

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

Extent of Power.

The power of Congress under this clause is plenary and exclusive,¹ and includes all the means by which armies can be raised, whether by voluntary enlistment or compulsory draft.² An individual may be required to perform military duty without his consent if the demand is made by a proper exercise of the national will,³ and minors may be enlisted without the consent of their parents.⁴ The age at which the soldier shall be received, the period for which he shall serve,⁵ and the time when his service shall be deemed to commence, are matters for Congress to determine.⁶

The power includes the provision of necessary officers, equipments and supplies and the establishment of military academies,⁷ and the making of such orders and regulations as may be necessary to prevent an evasion of duty by those liable to service.⁸ Congress has full power to legislate in the matter of the increase and reduction of the army.⁹

¹ Tarble's Case, 13 Wall. 408, 20 L. ed. 597; *Ferguson v. Landram*, 1 Bush, 548; *Ex parte Bright*, 1 Utah, 155.

² Tarble's Case, 13 Wall. 408, 20 L. ed. 597; *Kneedler v. Lane*, 45 Pa. St. 238; *In re Griner*, 23 Wis. 423; and see *Ex parte Coupland*, 26 Tex. 386.

³ *United States v. Bainbridge*, 1 Mason, 71, Fed. Cas. No. 14,497; *Ex parte Coupland*, 26 Tex. 394.

⁴ *United States v. Bainbridge*, 1 Mason, 71, Fed. Cas. No. 14,497; *Ex parte Brown*, 5 Cr. C. C. 554, Fed. Cas. No. 1972; *United States v. Stewart, Crabbe*, 205, Fed. Cas. No. 16,400; *Commonwealth v. Murray*, 4 Binn. 487, 5 Am. Dec. 412; *Commonwealth v. Barker*, 5 Binn. 423; *Roberts' Case*, 2 Hall L. J. 192; *Commonwealth v. Gamble*, 11 Serg. & R. 94.

⁵ Tarble's Case, 13 Wall. 408, 20 L. ed. 597.

⁶ *Kneedler v. Lane*, 45 Pa. St. 238.

⁷ *United States v. Rhodes*, 1 Abb. U. S. 50, Fed. Cas. No. 16,151.

⁸ *Allen v. Colby*, 45 N. H. 544.

⁹ *Street v. United States*, 133 U. S. 307, 10 S. Ct. 309, 33 L. ed. 631.

— Power of States.

The power under this clause may be exercised by Congress without question from any state authority.¹⁰ In the matter of a national conscription the states have no authority whatever, and any aid rendered by them would be simply as volunteers;¹¹ but where Congress provides for a draft, a state may give a bounty to those who volunteer.¹² This power takes precedence over the power of the state over its militia.¹³

State courts cannot discharge from enlistments upon habeas corpus, although such enlistments were illegal.¹⁴ In such cases habeas corpus must be addressed to United States courts;¹⁵ state courts have no jurisdiction to inquire into the illegality of an enlistment.¹⁶

¹⁰ *Tarble's Case*, 13 Wall. 408, 20 L. ed. 597.

¹¹ *Booth v. Woodbury*, 32 Conn. 118.

¹² *Booth v. Woodbury*, 32 Conn. 118; *Taylor v. Thompson*, 42 Ga. 9; *Coffman v. Keightly*, 24 Ind. 509; *Board v. Bearse*, 25 Ind. 110; *Winchester v. Corinna*, 55 Me. 9; *Wilson v. Burkman*, 13 Minn. 441; *Comer v. Folsom*, 13 Minn. 219; *State v. Demarest*, 32 N. J. 528; *State v. Jackson*, 31 N. J. 189; *Speer v. Directors*, 50 Pa. St. 150; *Ahl v. Gleim*, 52 Pa. St. 324.

¹³ *Kneedler v. Lane*, 45 Pa. St. 238.

¹⁴ *Tarble's Case*, 13 Wall. 397, 20 L. ed. 597, reversing 25 Wis. 390, 3 Am. Rep. 85; *In re Farrand*, 1 Abb. U. S. 146, Fed. Cas. No. 4678; *In re Keeler*, Hemp. 306, Fed. Cas. No. 7637; *In re Neill*, 8 Blatchf. 156, Fed. Cas. No. 10,089; *In re Sprangler*, 11 Mich. 298. Contra, *State v. Dimmick*, 12 N. H. 194, 37 Am. Dec. 197; *In re Dobbs*, 21 How. Pr. 68; *In re Barrett*, 42 Barb. 479; *In re Reynolds*, 6 Park. Cr. Rep. 276, Fed. Cas. No. 11,722.

¹⁵ *Ex parte Rielly*, 2 Abb. Pr., N. S., 334.

¹⁶ *Ex parte Yerger*, 8 Wall. 85, 19 L. ed. 332.

13. To provide and maintain a navy;

This grant authorizes Congress to buy or build vessels of war, to man, arm and equip them, and to establish naval academies,¹ and to provide for the punishment of desertion and other crimes, and make all needful rules for the government of the navy.² Ships of war of a friendly foreign power, are not subject to the jurisdiction of the United States while in our ports,³ and are immune from United States laws so long as they respect the sovereignty of this government.⁴

¹ *United States v. Bevans*, 3 Wheat. 337, 4 L. ed. 404; *United States v. Rhodes*, 1 Abb. U. S. 50, Fed. Cas. No. 10,151.

² *Dynes v. Hoover*, 20 How. 65; *Smith v. Whitney*, 116 U. S. 182, 6 S. Ct. 578, 29 L. ed. 601.

³ *United States v. Bevans*, 3 Wheat. 330, 4 L. ed. 404; *The Exchange v. McFaddon*, 7 Cr. 145, 3 L. ed. 287.

⁴ *The Santissima Trinidad*, 1 Brock. 497, Fed. Cas. No. 2563; *Walley v. The Liberty*, 12 La. 101, 32 Am. Dec. 115.

14. To make rules for the government and regulation of the land and naval forces.

The power of Congress to provide for the trial and punishment of military and naval offenses by courts-martial may be exercised under this clause, without regard to the Fifth Amendment,¹ and it cannot be abridged or in any way affected by the states through either their legislative or judicial departments.² Courts-martial are to be deemed special tribunals constituted for the purpose of enforcing the rules provided under this clause, and their proceedings within the scope of their jurisdiction cannot be controlled or reviewed in the civil courts by prohibition or otherwise.³ It is only where a court-martial has no jurisdiction of the person or the offense that the civil courts may revise or nullify its proceedings.⁴

The power to establish rules implies, necessarily, the power to modify or repeal or to create anew.⁵ Army and navy regulations authorized by Congress have the force of law,⁶ and the same effect is given to department regulations by congressional recognition.⁷

¹ *Dynes v. Hoover*, 20 How. 65, 15 L. ed. 838; *Ex parte Reed*, 100 U. S. 21, 25 L. ed. 538; *Ex parte Mason*, 105 U. S. 701, 26 L. ed. 1213; *Johnson v. Sayre*, 158 U. S. 115, 15 S. Ct. 776, 37 L. ed. 914; *In re Bogart*, 2 Saw. 401, Fed. Cas. No. 1596.

² *In re Fair*, 100 Fed. 149.

³ *Dynes v. Hoover*, 20 How. 81, 15 L. ed. 838; *Wales v. Whitney*, 114 U. S. 570, 5 S. Ct. 1050, 29 L. ed. 277; *Smith v. Whitney*, 116 U. S. 176, 6 S. Ct. 570, 29 L. ed. 601; *Johnson v. Sayre*, 158 U. S. 118, 15 S. Ct. 773, 39 L. ed. 914; *Swaim v. United States*, 165 U. S. 561, 17 S. Ct. 448, 41 L. ed. 823; *In re Vidal*, 179 U. S. 527, 21 S. Ct. 48, 45 L. ed. 118; *McClaghry v. Deming*, 186 U. S. 69, 22 S. Ct. 786, 46 L. ed. 1049.

⁴ *Wales v. Whitney*, 114 U. S. 570, 5 S. Ct. 1050, 29 L. ed. 277; *In re Grimley*, 137 U. S. 150, 11 S. Ct. 54, 34 L. ed. 636; *Carter v. McClaghry*, 183 U. S. 401, 22 S. Ct. 181, 46 L. ed. 236.

⁵ *United States v. Eliason*, 16 Pet. 302, 10 L. ed. 968.

⁶ *United States v. Freeman*, 3 How. 567, 11 L. ed. 724; *Gratiot v. United States*, 4 How. 117, 11 L. ed. 884; *Ex parte Reed*, 100 U. S. 23, 25 L. ed. 538.

⁷ *Smith v. Whitney*, 116 U. S. 176, 6 S. Ct. 570, 29 L. ed. 601.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

Exercise of the Power.

The power to call forth the militia is limited to the three purposes expressed.¹ This clause imports no prohibition as to the use of the army and navy for the same purposes, nor that the militia cannot be used for the suppression of a rebellion as well as an insurrection;² the authority to suppress rebellion is found in the powers to suppress insurrection and carry on war.³ The power here granted is a continuation of the powers to declare war, maintain armies and navies, and provide for the common defense;⁴ it is to be exercised when sudden emergency renders it necessary to preserve peace and the existence of the Union.⁵ The power to repel invasions includes the power to provide against the attempt or danger of invasion,⁶ and upon the suppression of a rebellion Congress may prescribe the conditions of peace.⁷

The act of February 28, 1795, delegating to the President power to call forth the militia is constitutional.⁸ Under this act the power to determine when the exigency requiring the calling forth of the militia has arisen is exclusively in the President.⁹

¹ *Kneedler v. Lane*, 45 Pa. St. 238.

² *Texas v. White*, 7 Wall. 700, 19 L. ed. 227; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Kneedler v. Lane*, 45 Pa. St. 238.

³ *Texas v. White*, 7 Wall. 701, 19 L. ed. 227; *Tyler v. Defrees*, 11 Wall. 345, 20 L. ed. 161.

⁴ *Kneedler v. Lane*, 45 Pa. St. 238.

⁵ *Luther v. Borden*, 7 How. 43, 12 L. ed. 581; *Ex parte Vallandigham*, 28 Fed. Cas. 907.

⁶ *Martin v. Mott*, 12 Wheat. 19, 6 L. ed. 537.

⁷ *Jacoway v. Denton*, 25 Ark. 625; *Shorter v. Cobb*, 39 Ga. 285.

⁸ *Luther v. Borden*, 7 How. 43, 12 L. ed. 581; *Martin v. Mott*, 12 Wheat. 32, 33, 6 L. ed. 537.

⁹ *Martin v. Mott*, 12 Wheat. 33, 6 L. ed. 537; *Luther v. Borden*, 7 How. 43, 12 L. ed. 581; *Ex parte Vallandigham*, 28 Fed. Cas. 907; *Van Derheyden v. Young*, 11 Johns. 150; *Duffield v. Smith*, 3 Serg. & R. 590.

and his determination upon this point is conclusive.¹⁰ The President may make his request direct to the executive of the state, or by order directed to any subordinate officer of the militia;¹¹ such a request is, in legal intendment, an order,¹² disobedience of which renders a citizen liable to court-martial.¹³ Congress may make laws to enforce a call;¹⁴ in this the states have concurrent power, and may prescribe penalties for failure to obey the President's call.¹⁵ They possess also a concurrent power to aid the national government by calls under their own authority,¹⁶ and in emergencies may use the militia to put down armed insurrection.^{16a}

— Status of Militia in Service.

So long as the militia is acting under the military jurisdiction to which it belongs the state and federal governments have concurrent power over it;¹⁷ but the militia is not subject to the rules and articles of war unless in the actual employment of the United States.¹⁸ Congress has always recognized a substantial difference between the regular forces and the militia,¹⁹ and it is only when called out and actually mustered into the service that state forces become national militia.²⁰ Congress

¹⁰ *Martin v. Mott*, 12 Wheat. 43, 6 L. ed. 537; *Luther v. Borden*, 7 How. 43, 12 L. ed. 581.

¹¹ *Houston v. Moore*, 5 Wheat. 15, 5 L. ed. 19.

¹² *Houston v. Moore*, 5 Wheat. 40, 5 L. ed. 19.

¹³ *Martin v. Mott*, 12 Wheat. 34, 6 L. ed. 537; *Tyler v. Pomeroy*, 8 Allen, 493.

¹⁴ *Commonwealth v. Irish*, 3 Serg. & R. 176.

¹⁵ *Houston v. Moore*, 5 Wheat. 15, 5 L. ed. 19.

¹⁶ *Houston v. Moore*, 5 Wheat. 15, 5 L. ed. 19.

^{16a} *Luther v. Borden*, 7 How. 45, 12 L. ed. 581.

¹⁷ *Houston v. Moore*, 5 Wheat. 16, 5 L. ed. 19.

¹⁸ *Houston v. Moore*, 5 Wheat. 62, 5 L. ed. 19; *Howes v. Middleborough*, 108 Mass. 127; *In re Sprangler*, 11 Mich. 321; *Mills v. Martin*, 19 Johns. 24.

¹⁹ *McClaghry v. Deming*, 186 U. S. 56-61, 22 S. Ct. 786, 46 L. ed. 1049.

²⁰ *Houston v. Moore*, 5 Wheat. 15, 5 L. ed. 19; *Martin v. Mott*, 12 Wheat. 19, 6 L. ed. 537.

may fix the period at which state militia shall be deemed in the federal service; in the absence of action fixing such time the national service begins upon reaching the place of rendezvous.²¹

²¹ *Houston v. Moore*, 5 Wheat. 16-20, 5 L. ed. 19; *Antrim's Case*, 1 Fed. Cas. (No. 495), 1064; *McCall's Case*, 15 Fed. Cas. (No. 8669), 1226.

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

Power of Congress.

The power to govern the militia is distinct from the power of calling it out.¹ Organizing includes the determination of qualifications.² The power of Congress becomes exclusive after the militia has entered the service of the United States,³ and so far as Congress has provided for organization action by the states is excluded,⁴ and where a board of surgeons has been authorized to determine the qualifications of members of the militia its actions cannot be controlled by state courts.⁵ The power of Congress is unlimited except in the officering and training of the militia.⁶

— Powers of States.

If Congress neglects to exercise its power under this clause the states have concurrent power so long as the militia is acting under its jurisdiction.⁷ In such case it is only the actual exercise of its power by Congress that excludes state action,⁸ and even where Congress has acted state laws are void only so far as they conflict with congressional legislation.⁹ The President must exercise his command of the militia through the duly appointed state officers.¹⁰

¹ *Houston v. Moore*, 5 Wheat. 16, 5 L. ed. 19.

² *Opinions of Justices*, 80 Mass. 548.

³ *Houston v. Moore*, 5 Wheat. 16, 5 L. ed. 19.

⁴ *Houston v. Moore*, 5 Wheat. 51, 5 L. ed. 19; *Mills v. Martin*, 19 Johns. 7.

⁵ *Ex parte Hill*, 38 Ala. 450.

⁶ *Houston v. Moore*, 5 Wheat. 56, 5 L. ed. 19.

⁷ *Houston v. Moore*, 5 Wheat. 56, 5 L. ed. 19; *Luther v. Borden*, 7 How. 45, 12 L. ed. 581.

⁸ *People v. Hill*, 126 N. Y. 504, 27 N. E. 790.

⁹ *Houston v. Moore*, 5 Wheat. 56, 5 L. ed. 19; *Dunne v. People*, 94 Ill. 120, 23 Am. Rep. 213.

¹⁰ *Opinions of Justices*, 80 Mass. 548.

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

District of Columbia.

By this clause Congress is given exclusive jurisdiction over the District of Columbia for every purpose of government,¹ national or local,² in all cases whatsoever, including taxation.³ The terms of this clause are not limited by the principle that representation is necessary to taxation; taxes may be levied on the basis of the census directed to be taken by the constitution.⁴ Congress legislates for the District with the same power as the legislative assemblies of the states,⁵ and in so doing it acts as the legislature of the Union.⁶ The failure of Congress to exercise its power in no way impairs the grant,⁷ but it must be exercised subject to the prohibitions contained in the constitution.⁸ Courts established under this clause may issue all nec-

¹ *Loughborough v. Blake*, 5 Wheat. 324, 5 L. ed. 98; *Cohen v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Kendall v. United States*, 12 Pet. 619; *Mattingly v. District of Columbia*, 97 U. S. 690, 24 L. ed. 1098.

² *Shoemaker v. United States*, 147 U. S. 300, 13 S. Ct. 361, 30 L. ed. 170; *Parsons v. District of Columbia*, 170 U. S. 52, 18 S. Ct. 521, 42 L. ed. 943; *Capitol Traction Co. v. Hof*, 174 U. S. 5, 19 S. Ct. 580, 43 L. ed. 873; *United States v. Cornell*, 2 Mason, 91, Fed. Cas. No. 14,868.

³ *Loughborough v. Blake*, 5 Wheat. 335, 5 L. ed. 98; *Gibbins v. District of Columbia*, 116 U. S. 467, 6 S. Ct. 429, 29 L. ed. 680.

⁴ *Loughborough v. Blake*, 5 Wheat. 321, 5 L. ed. 98.

⁵ *Mattingly v. District of Columbia*, 97 U. S. 690, 24 L. ed. 1098.

⁶ *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257.

⁷ *Quinn's Case*, 12 Int. Rev. Rec. 151.

⁸ *United States v. More*, 3 Cr. 160, 2 L. ed. 397.

essary process and such process may be served anywhere in the United States.⁹

— Status and Local Government.

The District of Columbia is a separate political community in a certain sense, and in that sense may be called a state whose sovereign power is lodged in the government of the United States;¹⁰ but it is not strictly a state within the meaning of that term as used in the constitution.¹¹ The inhabitants of the District are not citizens of a state.¹² The District of Columbia is a municipal corporation,¹³ and as such it may be invested with legislative authority;¹⁴ but it can exercise only those powers which are expressly conferred by statute,¹⁵ which must be of a strictly municipal nature.¹⁶ Thus Congress may delegate the power to improve or repair streets and to assess adjacent property therefor;¹⁷ to construct an aqueduct drawing its supply from within a consenting state;¹⁸ to regulate public

⁹ *United States v. Williams*, 4 Cr. C. C. 393, Fed. Cas. No. 16,712.

¹⁰ *Metropolitan R. R. v. District of Columbia*, 132 U. S. 9, 10 S. Ct. 19, 33 L. ed. 231; *Talbott v. Silver Bow County*, 139 U. S. 444, 11 S. Ct. 594, 35 L. ed. 210.

¹¹ *Hepburn v. Ellzey*, 2 Cr. 453, 2 L. ed. 332; *Railroad Co. v. Harris*, 12 Wall. 86, 20 L. ed. 354.

¹² *Hoe v. Jamieson*, 166 U. S. 397, 17 S. Ct. 597, 41 L. ed. 1049; *Picquet v. Swan*, 5 Mason, 55, Fed. Cas. No. 11,134; *Prentiss v. Brennan*, 2 Blatchf. 164, Fed. Cas. No. 11,385; *Cissel v. McDonald*, 16 Blatchf. 152, Fed. Cas. No. 2729.

¹³ *Thompson v. Carroll*, 22 How. 435, 16 L. ed. 387; *Metropolitan R. R. v. District of Columbia*, 132 U. S. 9, 10 S. Ct. 19, 33 L. ed. 231.

¹⁴ *United States v. Bevans*, 3 Wheat. 388, 4 L. ed. 404; *Welch v. Cook*, 97 U. S. 542, 24 L. ed. 1112.

¹⁵ *District of Columbia v. Bailey*, 171 U. S. 176, 18 S. Ct. 868, 43 L. ed. 118.

¹⁶ *Stoutenburgh v. Hennick*, 129 U. S. 147, 9 S. Ct. 256, 32 L. ed. 637.

¹⁷ *Willard v. Presbury*, 14 Wall. 680, 20 L. ed. 719; *Wilson v. Lambert*, 168 U. S. 614, 18 S. Ct. 217, 42 L. ed. 599; *Wright v. Davidson*, 181 U. S. 379, 21 S. Ct. 616, 45 L. ed. 900.

¹⁸ *Redall v. Bryan*, 14 Md. 444, 74 Am. Dec. 550.

markets;¹⁹ but the power of Congress to regulate commerce cannot be delegated to the District.²⁰ The grant of local government is not a delegation of the power of exclusive legislation given to Congress.²¹

— Operation and Effect of Cession.

The act of July 16, 1790, providing for the establishment of the seat of government accepted a certain district, but by its provisions state laws were not to be affected until Congress provided for the government of the district. As such provision was not made until February 27, 1801, the state right to legislate continued until that time,²² and where the acts of Congress made no changes in the existing laws, the laws of Virginia and Maryland remained in force in the parts of the district ceded by them respectively;²³ but the effect of statutes within the district cannot be controlled by decision of the state courts rendered since the cession.²⁴ As to the operation of the cession upon individuals, its only effect was to terminate the state citizenship of residents;²⁵ contract obligations were not affected,²⁶ and liens on property for debt were continued.²⁷

— "Places Purchased."

This phrase limits the national government to one mode of acquiring exclusive legislative authority over land within a

¹⁹ *Washington etc. Co. v. District of Columbia*, 172 U. S. 367, 368, 19 S. Ct. 218, 43 L. ed. 478.

²⁰ *Stoutenburgh v. Hennick*, 129 U. S. 147, 9 S. Ct. 256, 32 L. ed. 637.

²¹ *Washington v. Eaton*, 4 Cr. C. C. 352, Fed. Cas. No. 17,228.

²² *Young v. Bank of Alexandria*, 4 Cr. 384, 3 L. ed. 32.

²³ *United States v. Sims*, 1 Cr. 256, 2 L. ed. 96; *Taylor v. Thompson*, 5 Pet. 368, 8 L. ed. 154; *Ex parte Watkins*, 7 Pet. 574, 8 L. ed. 186; *Deneale v. Archer*, 8 Pet. 530, 8 L. ed. 1033; *Stelle v. Carroll*, 12 Pet. 205, 9 L. ed. 1056; *United States v. Eliason*, 16 Pet. 301, 10 L. ed. 968; *Rhodes v. Bell*, 2 How. 404, 11 L. ed. 314; *In re Wolf*, 27 Fed. 606.

²⁴ *Russell v. Allen*, 107 U. S. 171, 2 S. Ct. 327, 27 L. ed. 397.

²⁵ *Reilly v. Lamar*, 2 Cr. 356, 2 L. ed. 300.

²⁶ *Korn v. Mutual Assur. Soc.*, 6 Cr. 199, 3 L. ed. 195.

²⁷ *Mutual Assur. Soc. v. Watts*, 1 Wheat. 282, 4 L. ed. 91.

state, viz., by purchase with the state's consent; when land is acquired in any other way, as by cession, any conditions may be annexed to it not inconsistent with the public use contemplated.²⁸ So a state may impose the condition that jurisdiction shall be retained by the United States only so long as the place is used for the purposes specified;²⁹ may continue its laws in force there so far as they do not conflict with necessary acts of Congress;³⁰ or may provide that civil and criminal process of state courts may be executed therein;³¹ but where a cession has been made subject to certain conditions, the United States takes entire political jurisdiction, save as expressed in the conditions, and it cannot be limited without the consent of Congress.³²

The United States can acquire the right of exclusive jurisdiction only in the mode pointed out by the constitution.³³ The government may own and use land within a state without acquiring jurisdiction over the territory.³⁴ If land is acquired from the owner the United States holds it in subordination to the ordinary laws of the state;³⁵ the mere purchase itself does not oust the jurisdiction or sovereignty of the state over the

²⁸ *Chicago etc. Ry. Co. v. McGinn*, 114 U. S. 545, 5 S. Ct. 1005, 29 L. ed. 270; *In re Kelly*, 71 Fed. 549.

²⁹ *Fort Leavenworth Ry. v. Lowe*, 114 U. S. 525, 5 S. Ct. 995, 29 L. ed. 264; *Palmer v. Barrett*, 162 U. S. 399, 16 S. Ct. 837, 40 L. ed. 1015; affirming 135 N. Y. 336, 31 N. E. 1017, 17 L. R. A. 720.

³⁰ *Chicago etc. Ry. v. McGinn*, 114 U. S. 546, 5 S. Ct. 1005, 29 L. ed. 270; *Crook etc. v. Old Point Comfort Hotel Co.*, 54 Fed. 604.

³¹ *Palmer v. Barrett*, 162 U. S. 399, 16 S. Ct. 837, 40 L. ed. 1015; *Martin v. House*, 39 Fed. 694.

³² *In re Ladd*, 74 Fed. 31; *United States v. Cornell*, 2 Mason, 66, Fed. Cas. No. 14,867; *United States v. Davis*, 5 Mason, 356, Fed. Cas. No. 14,930; *Commonwealth v. Clary*, 8 Mass. 72; *Mitchell v. Tibbetts*, 34 Mass. 298; *United States v. Travers*, 2 Wheel. C. C. 490, Fed. Cas. No. 16,537.

³³ *United States v. Tierney*, 1 Bond, 571, Fed. Cas. No. 16,517; *People v. Godfrey*, 17 Johns. 225; *Clay v. State*, 4 Kan. 49.

³⁴ *Renner v. Bennett*, 21 Ohio St. 431.

³⁵ *United States v. Crosby*, 7 Cr. 116, 3 L. ed. 287; *Commonwealth v. Young*, Bright. 302.

land purchased;³⁶ the government holds only as an individual,³⁷ as where land is rented for a temporary purpose.³⁸

Consent or ratification by the state is necessary to the acquisition of exclusive jurisdiction,³⁹ but it is necessary for no other purpose, and cannot be required in order to permit the United States to exercise its right of eminent domain.⁴⁰ An act of the state legislature will not confer exclusive jurisdiction without some act of acceptance upon the part of the United States,⁴¹ and a conveyance of land to the United States is void and inoperative unless the acquisition was authorized by Congress.⁴² When, however, these acts have concurred the state jurisdiction ceases,⁴³ and the ordinary laws of the state cease to have any force in the place acquired.⁴⁴ This phrase contemplates only "places" acquired within a state and is not applicable to territories.⁴⁵

³⁶ *United States v. Cornell*, 2 Mason, 66, Fed. Cas. No. 14,867; *United States v. Davis*, 5 Mason, 364, Fed. Cas. No. 14,930; *United States v. San Francisco Bridge Co.*, 88 Fed. 891; *Commonwealth v. Clary*, 8 Mass. 72.

³⁷ *Commonwealth v. Young*, Bright. 302; *People v. Godfrey*, 17 Johns. 225; *United States v. Traver*, 2 Wheel. C. C. 490, Fed. Cas. No. 16,537; *People v. Lent*, 2 Wheel. C. C. 548.

³⁸ *United States v. Tierney*, 1 Bond, 571, Fed. Cas. No. 16,517; *Renner v. Bennett*, 21 Ohio St. 431.

³⁹ *United States v. San Francisco Bridge Co.*, 88 Fed. 891; *United States v. Tierney*, 1 Bond, 571, Fed. Cas. No. 16,517; *United States v. Cornell*, 2 Mason, 66, Fed. Cas. No. 14,867; *Commonwealth v. Young*, Bright. 302; *McConnell v. Wilcox*, 2 Ill. 344.

⁴⁰ *Fort Leavenworth etc. R. R. v. Lowe*, 114 U. S. 531, 5 S. Ct. 995, 29 L. ed. 264; *Chappell v. United States*, 160 U. S. 510, 16 S. Ct. 397, 40 L. ed. 510; *Ex parte Hebard*, 4 Dill. 384, Fed. Cas. No. 6312; *United States v. Stahl, McCahon*, 206, Fed. Cas. No. 16,373.

⁴¹ *People v. Lent*, 2 Wheel. C. C. 548.

⁴² *United States v. Tichenor*, 12 Fed. 415.

⁴³ *United States v. Cornell*, 2 Mason, 66, Fed. Cas. No. 14,867; *Commonwealth v. Young*, Bright. 302; *People v. Godfrey*, 17 Johns. 225.

⁴⁴ *United States v. Bevans*, 3 Wheat. 336, 4 L. ed. 404; *Cohens v. Virginia*, 6 Wheat. 360, 5 L. ed. 257; *United States v. Ames*, 1 Wood. & M. 84, Fed. Cas. No. 14,441; *People v. Godfrey*, 17 Johns. 225.

⁴⁵ *Reynolds v. People*, 1 Colo. 179.

Congress may relinquish political jurisdiction over land acquired within a state without abandoning the use of the property itself,⁴⁶ and land once purchased cannot be sold without special authority of Congress.⁴⁷ The mere abandonment of a military post gives no authority to the Secretary of War to sell the land, and such a sale is void.⁴⁸ In case of retrocession the jurisdiction and authority of the United States cease.⁴⁹

— Powers of States and United States.

Lands within a state can be withdrawn from its control only by compact or the voluntary legislative action of the state.⁵⁰ The state may continue to legislate for places acquired by the general government so far as that power has not been delegated to the latter,⁵¹ and may punish crimes committed therein to the same extent.⁵² The authority of the state with respect to crimes continues until Congress extinguishes it by legislation;⁵³ but where property has been purchased with the consent of the state, strictly as provided in this clause, offenses committed on such property cannot be punished in the state courts.⁵⁴ While, as to land acquired without the consent of the state, the United

⁴⁶ *Renner v. Bennett*, 21 Ohio St. 431.

⁴⁷ *United States v. Railroad Br. Co.*, 6 McLean, 517, Fed. Cas. No. 16,114.

⁴⁸ *Lear v. United States*, 50 Fed. 65.

⁴⁹ *Phillips v. Payne*, 92 U. S. 131, 23 L. ed. 649.

⁵⁰ *Lowrey v. Weaver*, 4 McLean, 32, Fed. Cas. No. 8584.

⁵¹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *Ex parte Watkins*, 3 Pet. 201, 7 L. ed. 650; *Kendall v. United States*, 12 Pet. 524, 9 L. ed. 1181; *Pollard v. Hagan*, 3 How. 212, 11 L. ed. 565; *Benson v. United States*, 146 U. S. 329, 13 S. Ct. 60, 36 L. ed. 991.

⁵² *United States v. Bevans*, 3 Wheat. 388, 4 L. ed. 404; *United States v. Stahl*, McCahon, 209, Fed. Cas. No. 16,373; *United States v. Ames*, 1 Wood. & M. 80, Fed. Cas. No. 14,441; *United States v. Sa-coo-da-cot*, 1 Abb. U. S. 383, Fed. Cas. No. 16,212.

⁵³ *People v. Lent*, 2 Wheel. C. C. 548; *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765.

⁵⁴ *United States v. Ames*, 1 Wood. & M. 76, Fed. Cas. No. 14,441; *Commonwealth v. Clary*, 8 Mass. 72.

States holds as an individual and the state retains its sovereignty, yet such property is exempt from state taxation.⁵⁵

The authority over purchased sites binds all the states, and carries with it the right to render it effectual,⁵⁶ and includes the power of taxation.⁵⁷ The inhabitants of property purchased are not citizens or electors of the state wherein the property is situated,⁵⁸ nor are they liable to state taxation on account of such residence.⁵⁹ The purchase of land by a corporation created by act of Congress gives the United States no jurisdiction over such land.⁶⁰ Jurisdiction over forts and military reservations in Wyoming is exclusively in the federal government.⁶¹

⁵⁵ *Van Brocklin v. Tennessee*, 117 U. S. 178, 6 S. Ct. 670, 29 L. ed. 845; *Wisconsin R. R. v. Price County*, 133 U. S. 504, 10 S. Ct. 344, 33 L. ed. 687; *United States v. Weise*, 2 Wall. Jr. 72, Fed. Cas. No. 16,659; *Bannon v. Burnes*, 39 Fed. 898; *United States v. Milwaukee*, 100 Fed. 828.

⁵⁶ *Cohens v. Virginia*, 6 Wheat. 428, 5 L. ed. 257; *Grether v. Wright*, 75 Fed. 757.

⁵⁷ *Loughborough v. Blake*, 5 Wheat. 324, 5 L. ed. 98.

⁵⁸ *Commonwealth v. Clary*, 8 Mass. 72; *Sinks v. Reese*, 19 Ohio St. 306, 2 Am. Rep. 397.

⁵⁹ *Webster v. Seymour*, 8 Vt. 135.

⁶⁰ *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765.

⁶¹ *Scott v. United States*, 1 Wyo. 40; *Brown v. Ilges*, 1 Wyo. 202.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Implied Powers.

This clause is not a limitation or restriction upon the powers of Congress, but an enlargement of them; it is a direct authority for the exercise of the power to make "all laws which shall be necessary or proper" for carrying into execution the powers enumerated.¹ Many powers are necessarily implied under the express grants of power in the constitution; "it would be utopian to suppose that a government can exist without leaving the exercise of discretion somewhere."² The constitution does not profess to enumerate the means by which the powers it confers shall be enumerated,³ and where an end is required and a duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted.⁴

Public necessity determines the existence of the incidental power where the end to be accomplished is within the scope of

¹ *United States v. Fisher*, 2 Cr. 396, 2 L. ed. 304; *McCulloch v. Maryland*, 4 Wheat. 411, 424, 4 L. ed. 579; *Anderson v. Dunn*, 6 Wheat. 225, 5 L. ed. 242; *United States v. Marigold*, 9 How. 560, 13 L. ed. 257; *Legal Tender Cases*, 12 Wall. 532, 20 L. ed. 287; *Interstate Commerce Commission v. Brimson*, 154 U. S. 472, 14 S. Ct. 1131, 38 L. ed. 1047; *In re Debs*, 158 U. S. 578, 15 S. Ct. 904, 39 L. ed. 1995; *In re Quarles*, 158 U. S. 537, 15 S. Ct. 961, 39 L. ed. 1080; *The City of Salem*, 13 Saw. 612, 37 Fed. 850; *Benner v. Dredging Co.*, 134 N. Y. 163, 30 Am. St. Rep. 654, 31 N. E. 330, 17 L. R. A. 220; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Commonwealth v. Morrison*, 2 A. K. Marsh. 75; *Mitchell v. Steelman*, 8 Cal. 363; *Dickey v. Turnpike Co.*, 7 Dana, 113; *Minturn v. Brower*, 24 Cal. 663.

² *Anderson v. Dunn*, 6 Wheat. 225, 226, 5 L. ed. 242; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 430.

³ *McCulloch v. Maryland*, 4 Wheat. 407, 4 L. ed. 579; *Prigg v. Commonwealth*, 16 Pet. 614, 10 L. ed. 1060; *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588; *Thompson v. Pacific R. R. Co.*, 9 Wall. 579, 19 L. ed. 792.

⁴ *Prigg v. Commonwealth*, 16 Pet. 615, 10 L. ed. 1060; *United States v. Cruikshank*, 1 Woods, 314, Fed. Cas. No. 14,897.

the constitution.⁵ The word "necessary" does not mean absolutely necessary, nor does it imply only the use of direct means.⁶ "Necessary" and "proper" as here used are synonymous,⁷ and merely require that the means shall be appropriate.⁸ The constitution deals in general language and should have a reasonable construction; it leaves Congress to adopt its own means of carrying out the powers conferred,⁹ and where these means are really calculated to effect the object intrusted to Congress the courts will not inquire into the degree of their necessity.¹⁰ Congress is allowed a wide discretion as to the means to be employed, but the means must bear some relation to the fitness of things and to the end to be accomplished.¹¹ There must be some relation between the means and the end,¹² but the relationship need not be direct and immediate.¹³

The courts will determine whether the means employed by Congress have any relation to the powers granted by the constitution,¹⁴ and if the measures adopted as the most eligible and

⁵ *Anderson v. Dunn*, 6 Wheat. 215, 5 L. ed. 242.

⁶ *McCulloch v. Maryland*, 4 Wheat. 419, 4 L. ed. 579; *United States v. Fisher*, 2 Cr. 396, 2 L. ed. 304; *Juillard v. Greenman*, 110 U. S. 447, 4 S. Ct. 126, 28 L. ed. 204; *In re Jackson*, 14 Blatchf. 250, Fed. Cas. No. 7124; *Lick v. Faulkner*, 25 Cal. 422; *George v. Concord*, 45 N. H. 443. And see *Hancock v. Yaden*, 121 Ind. 370, 16 Am. St. Rep. 399, 23 N. E. 254, 6 L. R. A. 576.

⁷ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

⁸ *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97; *Legal Tender Cases*, 12 Wall. 532, 20 L. ed. 287.

⁹ *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97.

¹⁰ *McCulloch v. Maryland*, 4 Wheat. 419, 4 L. ed. 579.

¹¹ *United States v. Fisher*, 2 Cr. 396, 2 L. ed. 304; *Stewart v. Kahn*, 11 Wall. 506, 20 L. ed. 176; *Juillard v. Greenman*, 110 U. S. 439, 4 S. Ct. 122, 28 L. ed. 204; *Motes v. United States*, 178 U. S. 462, 20 S. Ct. 993, 44 L. ed. 1150; *Interstate Commerce Com. v. Brimson*, 154 U. S. 478, 14 S. Ct. 1125, 38 L. ed. 1047.

¹² *Hepburn v. Griswold*, 8 Wall. 613, 19 L. ed. 513; *Legal Tender Cases*, 12 Wall. 544, 20 L. ed. 287.

¹³ *Legal Tender Cases*, 12 Wall. 536, 20 L. ed. 287.

¹⁴ *Cherokee Nation v. Kansas Ry. Co.*, 135 U. S. 657, 10 S. Ct. 965, 34 L. ed. 295.

appropriate are adapted to the end to be accomplished,¹⁵ and are not inconsistent in letter or spirit with the limitations of the constitution,¹⁶ the courts cannot declare them inexpedient or unwise.¹⁷

Every act of Congress, to be valid, must find in the constitution some warrant for its passage;¹⁸ but while construction, for the purpose of conferring a power, should be resorted to with great caution,¹⁹ yet every reasonable construction must be resorted to to save a statute from unconstitutionality,²⁰ and a choice of means by Congress is not to be adjudged invalid unless the conflict between the constitution and the statute is clear and strong.²¹ It is to be remembered that a grant of power is construed according to its reasonable import and is not controlled by reference to what existed at the time when the constitution was adopted,²² and that if the means adopted by Congress are legitimate they are appropriate.²³ In the execution of a power Congress is not restricted to the employment of those means alone without which the power would be nugatory,²⁴ and if the end may be reached indirectly by one mode, it may be reached

¹⁵ *Juillard v. Greenman*, 110 U. S. 439, 4 S. Ct. 122, 28 L. ed. 204; *Logan v. United States*, 144 U. S. 283, 12 S. Ct. 677, 36 L. ed. 429.

¹⁶ *Motes v. United States*, 178 U. S. 462, 20 S. Ct. 933, 44 L. ed. 1150; *Interstate Commerce Com. v. Brimson*, 154 U. S. 486, 14 S. Ct. 1125, 38 L. ed. 1047.

¹⁷ *Wilkes v. Dinsman*, 7 How. 127, 12 L. ed. 618; *United States v. Vassar*, 5 Wall. 469, 18 L. ed. 497; *United States v. Union Pacific R. R. Co.*, 91 U. S. 91, 23 L. ed. 224; *Li Sing v. United States*, 180 U. S. 495, 21 S. Ct. 449, 45 L. ed. 634; *Treat v. White*, 181 U. S. 269, 21 S. Ct. 611, 45 L. ed. 853.

¹⁸ *United States v. Harris*, 106 U. S. 635, 1 S. Ct. 601, 27 L. ed. 290.

¹⁹ *Ex parte Beavins*, 33 N. H. 89; *Mugler v. Kansas*, 123 U. S. 661, 8 S. Ct. 273, 31 L. ed. 205.

²⁰ *Hooper v. California*, 155 U. S. 657, 15 S. Ct. 207, 39 L. ed. 297; *Sweet v. Rechel*, 159 U. S. 392, 16 S. Ct. 43, 40 L. ed. 188.

²¹ *Interstate Commerce Com. v. Brimson*, 154 U. S. 478, 14 S. Ct. 1125, 38 L. ed. 1047.

²² *In re Jackson*, 14 Blatchf. 249, Fed. Cas. No. 7124.

²³ *United States v. Rhodes*, 1 Abb. U. S. 49, Fed. Cas. No. 16,151.

²⁴ *Boske v. Dominique*, 177 U. S. 468, 20 S. Ct. 701, 44 L. ed. 846.

directly by another.²⁵ The limitation of necessity and propriety expressed in this clause extends only to incidental legislation, and in no way affects the powers expressly granted.²⁶

— Instances of Exercise of Incidental Powers.

Every right created by, arising under, or dependent upon the constitution may be protected or enforced by such means as Congress may deem best;²⁷ if the constitution guarantees a right, the national government is clothed with authority to enforce it²⁸—the powers given to the national government are not ineffective because the means of enforcing them are not expressly given.²⁹ Congress has a large discretion as to the means to be employed,³⁰ and may employ those means which, in its judgment are most advantageous,³¹ taking care only that they are not inconsistent with the limitations placed upon the general power by the constitution.³²

Congress has undoubted power to construct interstate highways, and as a means to the exercise of that power may organize a corporation.³³ Under its power to regulate commerce Congress may empower a commission to investigate the conduct of interstate commerce;³⁴ may provide a penalty for obstructing interstate commerce;³⁵ may pass an act prescribing the

²⁵ *Interstate Commerce Com. v. Brimson*, 154 U. S. 486, 14 S. Ct. 1125, 38 L. ed. 1047.

²⁶ *Gibbons v. Ogden*, 9 Wheat. 186, 6 L. ed. 23.

²⁷ *In re Quarles*, 158 U. S. 535, 15 S. Ct. 959, 39 L. ed. 1080.

²⁸ *Prigg v. Commonwealth*, 16 Pet. 619, 10 L. ed. 1060; *United States v. Cruikshank*, 1 Woods, 314, Fed. Cas. No. 14,897.

²⁹ *Prigg v. Commonwealth*, 16 Pet. 618, 10 L. ed. 1060; *Strauder v. West Virginia*, 100 U. S. 310, 25 L. ed. 664.

³⁰ *Boske v. Dominique*, 177 U. S. 468, 20 S. Ct. 701, 44 L. ed. 846.

³¹ *McCulloch v. Maryland*, 4 Wheat. 419, 4 L. ed. 579.

³² *Interstate Commerce Com. v. Brimson*, 154 U. S. 472, 14 S. Ct. 1125, 38 L. ed. 1047.

³³ *Luxton v. North River Bridge Co.*, 153 U. S. 529, 14 S. Ct. 891, 38 L. ed. 808.

³⁴ *Interstate Commerce Com. v. Brimson*, 154 U. S. 473, 14 S. Ct. 1125, 38 L. ed. 1047; *Texas etc. Ry. Co. v. Interstate Commerce Com.*, 162 U. S. 233, 16 S. Ct. 666, 40 L. ed. 940.

³⁵ *United States v. Coombs*, 12 Pet. 78, 9 L. ed. 1002; *In re Debs*, 158 U. S. 578, 15 S. Ct. 904, 39 L. ed. 1092.

limit of capacity of passenger steamers.³⁶ A company may be employed by Congress to dredge a navigable river, and a party injured by the operations of the company cannot set up its want of authority in an action for damages.³⁷ As an incident to its power to regulate commerce, Congress cannot, however, provide for the inspection of cattle about to be slaughtered, although the packing-house involved engages principally in interstate shipments.³⁸ As aiding the execution of the revenue laws Congress may provide for the punishment of persons for interfering, by threats or otherwise, with the right to inform of violations;³⁹ to provide that persons chargeable with a revenue tax shall submit disputed cases to a revenue collector;⁴⁰ to make it a penal offense to destroy papers relating to merchandise liable to duty;⁴¹ and to apply the provisions of the civil service act to the revenue service.⁴² Congress may use all known and appropriate means for collecting and disbursing the revenue,⁴³ and may provide for the protection of revenue collectors and officers,⁴⁴ and in case of the death of a collector may provide that the government shall be the first paid out of his estate.⁴⁵

As an incident to its power to carry on war Congress had power to suspend the operation of the statute of limitations during the Rebellion;⁴⁶ to pass the nonintercourse acts;⁴⁷ to enact pension laws and provide a penalty for fraud committed

³⁶ *The City of Salem*, 13 Saw. 612, 37 Fed. 850.

³⁷ *Benner v. Dredging Co.*, 134 N. Y. 163, 30 Am. St. Rep. 654, 31 N. E. 330, 17 L. R. A. 220.

³⁸ *United States v. Boyer*, 85 Fed. 429.

³⁹ *In re Quarles*, 158 U. S. 537, 15 S. Ct. 961, 39 L. ed. 1080.

⁴⁰ *In re Meador*, 1 Abb. U. S. 334, Fed. Cas. No. 9375.

⁴¹ *In re Platt*, 7 Ben. 272, Fed. Cas. No. 11,211.

⁴² *Butler v. White*, 83 Fed. 581.

⁴³ *Murray v. Hoboken etc. Co.*, 18 How. 272, 15 L. ed. 372.

⁴⁴ *Dugan v. United States*, 3 Wheat. 179, 4 L. ed. 362; *United States v. Bevans*, 3 Wheat. 388, 4 L. ed. 404; *The Exchange v. McFadden*, 7 Cr. 116, 3 L. ed. 287; *United States v. Tingey*, 5 Pet. 115, 8 L. ed. 66.

⁴⁵ *Commonwealth v. Lewis*, 6 Binn. 266.

⁴⁶ *Stewart v. Kahn*, 11 Wall. 507, 20 L. ed. 176.

⁴⁷ *Hamilton v. Dillin*, 21 Wall. 93, 22 L. ed. 528.

under them;⁴⁸ to provide for compulsory enlistment;⁴⁹ to provide for the confiscation of enemies' property;⁵⁰ to provide for the removal to federal courts, of suits for acts done under the President's authority during the Rebellion,⁵¹ and to authorize the President to suspend the privilege of the writ of habeas corpus.⁵² In aid of its power to pass bankruptcy laws Congress may provide for the punishment of persons guilty of fraud in the disposition of a debtor's goods,⁵³ and provide for compositions with creditors.⁵⁴ Under the same power the district courts may be empowered to transfer the franchises of insolvent railroad companies.⁵⁵ Congress may also make the United States a preferred creditor in cases of insolvency.⁵⁶

In the exercise of its powers to make all laws necessary and proper for carrying into execution its enumerated powers Congress may incorporate a bank.⁵⁷

National banks being designed to aid the government, Congress is the sole judge of the necessity for creating them.⁵⁸ A law fixing the rate of interest to be charged by such banks is constitutional,⁵⁹ as is a law prescribing a penalty for taking usurious interest.⁶⁰ Any act tending to promote the efficiency of such banks is valid;⁶¹ e. g., a provision calculated to secure

⁴⁸ *United States v. Fairchild*, 1 Abb. U. S. 77, Fed. Cas. No. 15,067; *United States v. Marks*, 2 Abb. U. S. 535, Fed. Cas. No. 15,721.

⁴⁹ *Antrim's Case*, 1 Fed. Cas. 1065; *Ex parte Coupland*, 26 Tex. 417.

⁵⁰ *Norris v. Doniphan*, 4 Met. (Ky.) 409.

⁵¹ *Tod v. Court of Common Pleas*, 15 Ohio St. 387.

⁵² *McCall v. McDowell*, 1 Abb. U. S. 229, Fed. Cas. No. 8673.

⁵³ *United States v. Pusey*, 6 Bank. Reg. 288, Fed. Cas. No. 16,098.

⁵⁴ *In re Reiman*, 7 Ben. 466, Fed. Cas. No. 11,673.

⁵⁵ *Sweatt v. Boston etc. R. R. Co.*, 3 Cliff. 352, Fed. Cas. No. 13,684.

⁵⁶ *United States v. Fisher*, 2 Cr. 395, 2 L. ed. 304; *United States v. Bank of North Carolina*, 6 Pet. 35, 8 L. ed. 308.

⁵⁷ *McCulloch v. Maryland*, 4 Wheat. 411, 4 L. ed. 579.

⁵⁸ *Farmers' etc. Bank v. Dearing*, 91 U. S. 33, 23 L. ed. 196; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204.

⁵⁹ *Central Bank v. Pratt*, 115 Mass. 439, 15 Am. Rep. 138.

⁶⁰ *Farmers' National Bank v. Dearing*, 91 U. S. 37, 23 L. ed. 196.

⁶¹ *Chesapeake Bank v. First Nat. Bank*, 40 Md. 269, 17 Am. Rep. 601.

the safety of remittances,⁶² or an act limiting the right of the states to tax national banks.⁶³ The power to make treasury notes legal tender is not expressly given to Congress, but the power exists and is attributable to the power to borrow money on the credit of the United States, and to regulate the currency.⁶⁴ The power has been declared to be incident to the war power,⁶⁵ and to be incident to the general powers of Congress;⁶⁶ but the authority is now finally declared to be derived from the power to regulate the currency.⁶⁷

Congress may create, define and punish crimes or offenses when necessary for effectuating the objects of government.⁶⁸ The power to punish offenses is incidental to constitutional powers of sovereignty.⁶⁹ The alteration of registered United States bonds may be made a crime against the United States and be punished as such;⁷⁰ also the passing of counterfeit national bank bills;⁷¹ the conspiring to injure prisoners in the custody of a United States marshal;⁷² bringing into the country

⁶² *United States v. Fisher*, 2 Cr. 386, 2 L. ed. 304.

⁶³ *Talbot v. Silver Bow County*, 139 U. S. 440, 11 S. Ct. 595, 35 L. ed. 210; *People v. Weaver*, 100 U. S. 543, 25 L. ed. 705.

⁶⁴ *The Legal Tender Cases*, 12 Wall. 553, 20 L. ed. 287; *Juillard v. Greenman*, 110 U. S. 438, 4 S. Ct. 125, 28 L. ed. 204; *Schollenberger v. Brinton*, 52 Pa. St. 35; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 409.

⁶⁵ *Lick v. Faulkner*, 25 Cal. 418, 419; *George v. Concord*, 45 N. H. 438.

⁶⁶ *Maynard v. Newman*, 1 Nev. 278; *Miliken v. Sloat*, 1 Nev. 585.

⁶⁷ *Juillard v. Greenman*, 110 U. S. 438, 439, 4 S. Ct. 125, 126, 28 L. ed. 204.

⁶⁸ *United States v. Worrall*, 2 Dall. 384, Fed. Cas. No. 16,766; *United States v. Marigold*, 9 How. 567, 13 L. ed. 257; *United States v. Hall*, 98 U. S. 357, 25 L. ed. 180.

⁶⁹ *McCulloch v. Maryland*, 4 Wheat. 420, 4 L. ed. 579.

⁷⁰ *Ex parte Carll*, 106 U. S. 523, 1 S. Ct. 536, 27 L. ed. 288.

⁷¹ *Ex parte Houghton*, 7 Fed. 658, 8 Fed. 897.

⁷² *Logan v. United States*, 144 U. S. 283, 12 S. Ct. 622, 36 L. ed. 429.

counterfeit foreign coins.⁷³ There is a peace of the United States for the breach of which Congress may provide a penalty.⁷⁴

Congress may also make all laws necessary for carrying into execution the judgments of federal courts,⁷⁵ and having the power to make such laws may proceed under them to satisfy a judgment in favor of the government.⁷⁶ This power of regulating proceedings may be delegated by Congress to the courts themselves.⁷⁷ So also when a territory is admitted as a state, Congress may designate the court to which records shall be transferred and prescribe the mode for enforcement and review of judgments.⁷⁸

Other instances in which this incidental power has been held to have been validly exercised are: acts prohibiting the mailing of letters or circulars concerning lotteries, as incident to the power to establish postoffices and post-roads;⁷⁹ acts providing for the lease of public lands as incident to the power to "dispose of" such lands;⁸⁰ acts providing for the condemnation of lands for various purposes of government;⁸¹ acts providing for the distraint of property to satisfy a federal tax;⁸² acts pro-

⁷³ *United States v. Marigold*, 9 How. 567, 13 L. ed. 257.

⁷⁴ *In re Neagle*, 135 U. S. 69, 10 S. Ct. 658, 34 L. ed. 55; *In re Quarles*, 158 U. S. 535, 15 S. Ct. 959, 39 L. ed. 1080.

⁷⁵ *Bank of United States v. Halstead*, 10 Wheat. 53, 6 L. ed. 264; *Bank v. Thompson*, 173 Ill. 599, 64 Am. St. Rep. 140, 50 N. E. 1090.

⁷⁶ *United States v. Drennen*, Hemp. 325, Fed. Cas. No. 14,992.

⁷⁷ *Wayman v. Southard*, 10 Wheat. 1, 6 L. ed. 253; *Bank of United States v. Halstead*, 10 Wheat. 53, 6 L. ed. 264.

⁷⁸ *Express Company v. Kountze*, 8 Wall. 350, 19 L. ed. 457; *Hunt v. Palao*, 4 How. 590, 11 L. ed. 1115; *Koenigsberger v. Richmond Silver Min. Co.*, 158 U. S. 49, 15 S. Ct. 751, 39 L. ed. 839.

⁷⁹ *Ex parte Jackson*, 96 U. S. 732, 24 L. ed. 877, affirming 14 Blatchf. 250, Fed. Cas. No. 7124; *In re Rapiet*, 143 U. S. 133, 12 S. Ct. 374, 36 L. ed. 93.

⁸⁰ *United States v. Gratiot*, 14 Pet. 537, 10 L. ed. 573.

⁸¹ *Kohl v. United States*, 91 U. S. 373, 23 L. ed. 449; *United States v. Fox*, 94 U. S. 320, 24 L. ed. 192; *Van Brocklin v. Tennessee*, 117 U. S. 154, 6 S. Ct. 670, 29 L. ed. 845; *Cherokee Nation v. Kansas Ry. Co.*, 135 U. S. 656, 10 S. Ct. 965, 34 L. ed. 295; *Luxton v. North River Bridge Co.*, 153 U. S. 529, 14 S. Ct. 891, 38 L. ed. 808.

⁸² *Springer v. United States*, 102 U. S. 593, 26 L. ed. 253; *Schenck v. Peay*, 21 Fed. Cas. 682.

viding for extensions of patent rights as incident to the power to encourage inventions;⁸³ an act levying a tax on state bank notes in circulation as incident to the power to regulate the currency;⁸⁴ an act to protect homesteads on public lands.⁸⁵

⁸³ *Bloomer v. Stolley*, 5 McLean, 161, Fed. Cas. No. 1559.

⁸⁴ *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L. ed. 482.

⁸⁵ *United States v. Waddell*, 112 U. S. 76, 5 S. Ct. 35, 28 L. ed. 673.

SECTION 9.

LIMITATION OF THE POWERS OF CONGRESS.

1. Migration or importation of persons.
2. Habeas corpus not to be suspended.
3. Attainder and ex post facto laws prohibited.
4. Capitation and direct taxes.
5. Taxation on exports.
6. Commercial regulations.
7. Public moneys and accounts.
8. Titles of nobility. Presents, offices, etc.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The several clauses of this section impose limitations upon the powers of Congress and were not intended to apply to the state governments.¹ The first clause is a restriction upon the general power to regulate commerce;² but while it is to be deemed a limitation upon a power already granted, rather than a grant of power, members of the constitutional convention recognized that it was designed to confer upon Congress power to

¹ *Munn v. Illinois*, 94 U. S. 135, 24 L. ed. 113; *Morgan v. Louisiana Board of Health*, 118 U. S. 467, 6 S. Ct. 1120, 23 L. ed. 860; *Johnson v. Chicago etc. Elevator Co.*, 119 U. S. 400, 7 S. Ct. 260, 30 L. ed. 447; *Butler v. Hopper*, 1 Wash. C. C. 499, Fed. Cas. No. 2241.

² *Passenger Cases*, 7 How. 401, 12 L. ed. 702; *Gibbons v. Ogden*, 9 Wheat. 216, 6 L. ed. 23; *Wilson v. United States*, 1 Brock. 423, Fed. Cas. No. 17,846; *United States v. Libby*, 1 Wood. & M. 235, Fed. Cas. No. 15,597.

abolish the slave trade from the period limited,³ and an act of Congress having that object was later upheld.⁴

In *People v. Compagnie Gen. Trans.*, 107 U. S. 62, 2 S. Ct. 87, 27 L. ed. 383, the supreme court declared that there has never been any doubt that the first clause of this section refers only to persons of the African race, and that the words "migration" and "importation" refer to the different conditions of this race as regards freedom and slavery.⁵ "Importation" had always been applied to property and things as contradistinguished from persons, and as the framers of the constitution were unwilling to use the word "slaves," and described them as "persons," it was necessary to use the word "migration" as applied to them.⁶ Notwithstanding the early dictum that "migration" applies to voluntary as well as involuntary arrivals,⁷ the clause has finally been restricted in its application to the African race, referring the term "migration" to free negroes coming into the country, and "importation" to slaves.⁸

³ Madison Papers, pp. 1388-1673; Documentary Hist. Const., vol. III, pp. 606, 616, 713, 726; *Passenger Cases*, 7 How. 512, 12 L. ed. 702.

⁴ *Groves v. Slaughter*, 15 Pet. 514, 10 L. ed. 800; and see *United States v. Preston*, 3 Pet. 66, 7 L. ed. 601; *Savory v. Caroline*, 20 Ala. 19.

⁵ See, also, *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691; and opinion of Taney, C. J., *Passenger Cases*, 7 How. 475, 476, 12 L. ed. 702.

⁶ Taney, C. J., in *Passenger Cases*, 7 How. 476, 12 L. ed. 702; Documentary Hist. Const., vol. I, pp. 476, 616; but see *Gibbons v. Ogden*, 9 Wheat. 216, 6 L. ed. 23, especially opinion of Johnson, J., at p. 230.

⁷ *Gibbons v. Ogden*, 9 Wheat. 216, 6 L. ed. 23.

⁸ *People v. Compagnie Gen. Trans.*, 107 U. S. 62, 2 S. Ct. 87, 27 L. ed. 383.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Nature of Writ.

The writ of habeas corpus here referred to is the writ *ad subjiciendum*.¹ It is a writ of right,² but not a writ of course, since cause must be shown for its issuance.³ The object of the writ is to determine whether a prisoner can be lawfully detained;⁴ to protect against unwarranted encroachments upon personal liberty,⁵ and the proceedings under the writ are to be deemed civil rather than criminal, in which the civil right of personal liberty is asserted.⁶ "Habeas corpus" is a generic term and includes every species of that writ, but when used as in this clause, "the writ of habeas corpus" means the writ *ad subjiciendum*,⁷ and if, as so used, it had a well-known meaning, the framers of the constitution must have had reference to that meaning.⁸

— Suspension of the Privilege.

The suspension of the privilege of the writ of habeas corpus

¹ *The Santissima Trinidad*, 7 Wheat. 305, 5 L. ed. 454; *Martin v. Mott*, 12 Wheat. 29, 6 L. ed. 537; *Luther v. Borden*, 7 How. 1, 12 L. ed. 581; *Fleming v. Page*, 9 How. 615, 13 L. ed. 276.

² *Yates v. Lansing*, 5 Johns. 282.

³ *Ex parte Watkins*, 3 Pet. 201, 7 L. ed. 650; *Ex parte Milligan*, 4 Wall. 110, 18 L. ed. 281; *Ex parte Terry*, 128 U. S. 301, 9 S. Ct. 209, 32 L. ed. 405; *In re Boardman [Durrant]*, 169 U. S. 43, 18 S. Ct. 291, 42 L. ed. 653; *In re Hacker*, 73 Fed. 467; *State v. Goss*, 73 Minn. 127, 75 N. W. 1132; *Ex parte Deny*, 10 Dev. 214.

⁴ *Ekiu v. United States*, 142 U. S. 662, 12 S. Ct. 338, 35 L. ed. 1146.

⁵ *In re Bonner*, 151 U. S. 259, 14 S. Ct. 323, 38 L. ed. 149.

⁶ *Farnsworth v. Montana*, 129 U. S. 113, 9 S. Ct. 253, 32 L. ed. 616; *Ex parte Tom Tong*, 108 U. S. 560, 2 S. Ct. 871, 27 L. ed. 811; *Kurtz v. Moffitt*, 115 U. S. 494, 6 S. Ct. 148, 29 L. ed. 458.

⁷ *Ex parte Bollman*, 4 Cr. 95, 2 L. ed. 554.

⁸ *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 386; *Watson v. Mercer*, 8 Pet. 88, 8 L. ed. 876; *Carpenter v. Pennsylvania*, 17 How. 456, 15 L. ed. 127; *United States v. Wilson*, 7 Pet. 150, 8 L. ed. 640; *United States v. Harris*, 1 Abb. U. S. 115, Fed. Cas. No. 15,312.

does not suspend the writ itself.⁹ It is the privilege of having the writ issued and the case heard and disposed of, that is here referred to.¹⁰ The suspension merely denies to one arrested the privilege of obtaining his liberty by means of the writ;¹¹ it does not affect the duty of a court to issue the writ,¹² but requires the dismissal of the writ upon its return, without inquiry as to the merits.¹³ Accordingly Congress cannot forbid the issue of the writ by a state court,¹⁴ but may provide that an officer shall not be liable for an arrest made while the privilege of the writ is suspended.¹⁵ This suspension is tantamount to an express direction to arrest and imprison all persons who may be dangerous to the commonwealth.¹⁶

The constitutional guaranty of the writ of habeas corpus necessarily implies judicial action,¹⁷ and the necessity for suspending the privilege of the writ must be actual and present, the invasion real; threatened invasion is not sufficient,¹⁸ and the courts will take judicial notice of the close of the Rebellion and with it the end of the suspension of the writ.¹⁹

A distinction is to be drawn between the suspension of the writ under this clause and the ipso facto suspension which takes place when martial law actually exists.²⁰ Martial law is the law of military necessity in the actual presence of war;²¹ it finds its justification only where, from actual necessity or civil war, the courts are closed, and it is impossible to administer

⁹ *Ex parte Milligan*, 4 Wall. 130, 18 L. ed. 281.

¹⁰ *Macready v. Wilcox*, 33 Conn. 321.

¹¹ *Ex parte Milligan*, 4 Wall. 115, 18 L. ed. 281.

¹² *Ex parte Milligan*, 4 Wall. 130, 18 L. ed. 281.

¹³ *Ex parte Vallandigham*, 1 Wall. 243, 17 L. ed. 589; *Kulp v. Ricketts*, 3 Grant, 420; *Ex parte Fagan*, 2 Sprague, 91, Fed. Cas. No. 4604; *Ex parte Dunn*, 25 How. Pr. 467.

¹⁴ *Griffin v. Wilcox*, 21 Ind. 370; *Kneedler v. Lane*, 45 Pa. St. 238.

¹⁵ *McCall v. McDowell*, Deady, 233, 1 Abb. U. S. 212, Fed. Cas. No. 8673.

¹⁶ *McCall v. McDowell*, 1 Abb. U. S. 212, Fed. Cas. No. 8673.

¹⁷ *Ex parte Yerger*, 8 Wall. 95, 19 L. ed. 332.

¹⁸ *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281.

¹⁹ *Cozzens v. Frink*, 13 Am. L. Reg. 700.

²⁰ *In re Kemp*, 16 Wis. 359.

²¹ *United States v. Diekelman*, 92 U. S. 526, 23 L. ed. 742.

justice according to law,²² and its duration is limited by its necessity.²³ In this connection "martial law" must not be confounded with "military law" or with "military government." Military law consists of rules prescribed by Congress for the government of the army and navy, and applies only to persons in the military or naval service,²⁴ while military government is the dominion exercised in war over the territory and inhabitants of an enemy's country upon its conquest and occupation.²⁵

— - Power to Suspend Privilege.

Under this clause Congress alone has power to authorize the suspension of the privilege of the writ.²⁶ But direct enactment by Congress is not necessary; the President may be authorized to suspend the privilege when in his judgment the public safety so requires.²⁷ The Secretary of War has no authority to suspend the privilege of the writ,²⁸ nor has the commander of a military district.²⁹ This clause confers a discretionary power to be exercised upon an opinion of certain facts, and carries also the exclusive power to judge as to the existence of those facts.³⁰

²² *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281; *Winter v. Dickerson*, 42 Ala. 98.

²³ *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281; *Milligan v. Hovey*, 3 Biss. 18, Fed. Cas. No. 9605; *Johnson v. Jones*, 44 Ill. 142, 92 Am. Dec. 159.

²⁴ *Ex parte Milligan*, 4 Wall. 123, 18 L. ed. 281; *Johnson v. Jones*, 44 Ill. 142, 92 Am. Dec. 159.

²⁵ *Coleman v. Tennessee*, 97 U. S. 517, 24 L. ed. 1118; *Ex parte Ortiz*, 100 Fed. 955; *Cronin v. Patrick County*, 89 Fed. 79.

²⁶ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *Ex parte Merryman*, Taney, 246, Fed. Cas. No. 9487; *Jones v. Seward*, 3 Grant, 431; *Griffin v. Wilcox*, 21 Ind. 370; *In re Kamp*, 16 Wis. 359.

²⁷ *Ex parte Milligan*, 4 Wall. 114, 18 L. ed. 281; *McCall v. McDowell*, 1 Abb. U. S. 212, Fed. Cas. No. 8673; *In re Oliver*, 17 Wis. 681.

²⁸ *Ex parte Field*, 5 Blatchf. 63, Fed. Cas. No. 4761.

²⁹ *Ex parte Field*, 5 Blatchf. 63, Fed. Cas. No. 4761; *Johnson v. Duncan*, 3 Mart. 530, 6 Am. Dec. 675.

³⁰ *Martin v. Mott*, 12 Wheat. 31, 6 L. ed. 537; *Luther v. Borden*, 7 How. 44, 12 L. ed. 581; *Ex parte Milligan*, 4 Wall. 114, 18 L. ed. 281; *United States v. Packages*, 27 Fed. Cas. No. 288; *Ex parte Merryman*, Taney, 246, Fed. Cas. No. 9487.

3. No bill of attainder or ex post facto law shall be passed.

Bill of Attainder.*

This clause, while comprehensive in its language, applies only to the general government and contains no restriction on state legislation.¹ A bill of attainder is a legislative act which inflicts punishment without a judicial trial.² The term embraces bills of pains and penalties,³ and legislation is none the less objectionable in that it merely confiscates property; it may affect the life of an individual, or confiscate his property, or both;⁴ nor is it material that the infliction of punishment is conditional.⁵ The framers of the constitution must be deemed to have had in mind the meaning commonly given to the terms "bill of attainder" and "ex post facto law" at that time.⁶

The object of this clause is to secure the rights of citizens against deprivation for past conduct by legislative enactment in any form, however disguised.⁷ Laws requiring the assumption of a test-oath, and operating to exclude a citizen from any profession or avocation for past conduct, are objectionable as bills of pains and penalties prohibited by this clause;⁸ e. g., laws

¹ *Barron v. Baltimore*, 7 Pet. 248, 8 L. ed. 672.

² *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366; *In re De Giacomo*, 12 Blatchf. 401, Fed. Cas. No. 3747; *In re Leszynski*, 16 Blatchf. 19, Fed. Cas. No. 8279.

³ *Drehman v. Stifle*, 8 Wall. 601, 19 L. ed. 508; *In re Yang Sing*, 13 Saw. 496, 36 Fed. 439; *Norris v. Doniphan*, 4 Met. (Ky.) 434.

⁴ *Fletcher v. Peck*, 6 Cr. 138, 3 L. ed. 162; *Ex parte Law*, 35 Ga. 302; *In re Shorter*, 22 Fed. Cas. 19; *Myers v. Sanders*, 7 Dana, 519.

⁵ *Gaines v. Buford*, 1 Dana, 510.

⁶ *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 366; *United States v. Wilson*, 7 Pet. 150, 8 L. ed. 640; *Watson v. Mercer*, 8 Pet. 88, 8 L. ed. 876; *United States v. Harris*, 1 Abb. U. S. 115, Fed. Cas. No. 15,312; *Carpenter v. Pennsylvania*, 17 How. 463, 15 L. ed. 127.

⁷ *Cummings v. Missouri*, 4 Wall. 277, 18 L. ed. 356.

⁸ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366; *Pierce v. Carskadon*, 16 Wall. 239, 21 L. ed. 276; *Klinger v. Missouri*, 13 Wall. 257, 20 L. ed. 635.

* See also, art. I, § 10, cl. 1.

excluding from the right to practice attorneys who participated in the war of the Rebellion.⁹ A statute making the nonpayment of taxes evidence of participation in Rebellion, and forfeiting land absolutely without judicial hearing is a bill of attainder;¹⁰ but not a statute providing for a forfeiture for violating the internal revenue laws;¹¹ nor a statute imposing a forfeiture of citizenship for continuance of desertion after proclamation and trial by court-martial to enforce the penalty.¹² An act precluding Chinese who are United States citizens from returning to the country is objectionable under this clause.¹³ A provision exempting persons from liability for acts done under military authority during the Civil War is not a bill of attainder.¹⁴

— **Ex Post Facto Laws.***

As stated above, this clause applies only to Congress and contains no restriction upon state legislation.¹⁵ Every law that makes an act done before the passage of the law, and which was innocent when done, criminal, or that aggravates a crime or makes it greater than it was when committed, or that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed, or that alters the rules of evidence, permitting less or different evidence to convict a person of an offense committed prior to its passage, is an *ex post facto* law, and within the prohibition of this clause.¹⁶

⁹ *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366.

¹⁰ *Martin v. Snowden*, 18 Gratt. 100.

¹¹ *United States v. Distillery*, 2 Abb. U. S. 192, Fed. Cas. No. 14,965.

¹² *Gotchens v. Matheson*, 40 How. Pr. 97, 58 Barb. 152.

¹³ *In re Yang Sing Hee*, 13 Saw. 486, 36 Fed. 439.

¹⁴ *Drehman v. Stifle*, 8 Wall. 601, 602, 19 L. ed. 508; *Clark v. Dick*, 1 Dill. 14, Fed. Cas. No. 2818; *Peerce v. Kitzmiller*, 19 W. Va. 573.

¹⁵ *Barron v. Baltimore*, 7 Pet. 248, 8 L. ed. 672.

¹⁶ *Calder v. Bull*, 3 Dall. 393, 396, 397, 400, 1 L. ed. 640; *Fletcher v. Peck*, 6 Cr. 138, 3 L. ed. 162; *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876; *Cummings v. Missouri*, 4 Wall. 329, 18 L. ed. 351; *Ex parte Garland*, 4 Wall. 336, 18 L. ed. 366; *Burgess v. Salmon*, 97

* See, also, art. I, § 10, cl. 1.

The prohibition is "an additional bulwark in favor of the personal security of the subject";¹⁷ and the tendency is toward a liberal, rather than a narrow, construction in favor of that security,¹⁸ and the scope of the constitutional prohibition has been broadened beyond the definition laid down in early cases, until it includes any law which, in relation to the offense or its consequences, alters the situation of the party to his disadvantage.¹⁹ So a statute purporting to validate a punishment otherwise illegal is *ex post facto*;²⁰ but a law imposing forfeiture of citizenship for continuance of desertion after assurance of pardon is not;²¹ nor is an extradition treaty which applies to crimes committed before it was entered into.²²

U. S. 382, 24 L. ed. 1104; *In re De Giacomo*, 12 Blatchf. 401, Fed. Cas. No. 3747; *Reynolds v. State*, 1 Ga. 228; *Strong v. State*, 1 Blackf. 197; *Walston v. Commonwealth*, 16 B. Mon. 37; *State v. Johnson*, 12 Minn. 484, 93 Am. Dec. 247; *State v. Garesché*, 36 Mo. 259; *Woart v. Winnick*, 3 N. H. 473, 14 Am. Dec. 385; *State v. Moore*, 42 N. J. L. 228; *Dickinson v. Dickinson*, 3 Murph. (N. C.) 330, 9 Am. Dec. 609; *Shepherd v. People*, 25 N. Y. 406; *Ex parte Hunter*, 2 W. Va. 159.

¹⁷ *Calder v. Bull*, 3 Dall. 390, 2 L. ed. 648.

¹⁸ *Cummings v. Missouri*, 4 Wall. 277, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 333, 18 L. ed. 366; *Kring v. Missouri*, 107 U. S. 221, 2 S. Ct. 443, 27 L. ed. 506; *Moore v. State*, 43 N. J. L. 214, 39 Am. Rep. 568; *Anderson v. Baker*, 23 Md. 566.

¹⁹ *Kring v. Missouri*, 107 U. S. 232, 2 S. Ct. 449, 27 L. ed. 506; *Medley, Petitioner*, 134 U. S. 771, 10 S. Ct. 387, 33 L. ed. 835; *Thompson v. Utah*, 170 U. S. 351, 18 S. Ct. 623, 42 L. ed. 1061; *In re Murphy*, 87 Fed. 551; *Johnson v. People*, 173 Ill. 134, 50 N. E. 322; *Murphy v. Commonwealth*, 172 Mass. 269, 70 Am. St. Rep. 271, 52 N. E. 507, 48 L. R. A. 154; *Lindzey v. State*, 65 Miss. 545, 7 Am. St. Rep. 676, 5 South. 100; *Marion v. State*, 16 Neb. 354, 20 N. W. 291.

²⁰ *In re Murphy*, 1 Woolw. 141, Fed. Cas. No. 9947.

²¹ *Gotchens v. Matheson*, 40 How. Pr. 97, 58 Barb. 152.

²² *Ex parte De Giacomo*, 12 Blatchf. 391, Fed. Cas. No. 3747.

The term "ex post facto" is applicable only to laws of a penal nature,²² imposing penalties or forfeitures.^{23a} Accordingly an act of Congress protecting from civil process persons amenable to prosecution is not objectionable;²⁴ nor is a statute making treasury notes a legal tender for antecedent debts.²⁵

While, however, the constitutional inhibition is aimed at criminal laws, it cannot be evaded by giving civil form to that which is in substance criminal;²⁶ e. g., a requirement that persons claiming certain civil rights take a test-oath denying participation in the Rebellion.²⁷ On the other hand, a statute both criminal and civil in its nature, but which is retroactive only in its civil aspect, is not repugnant to the constitution.²⁸ So a statute taxing purchases made during the preceding year and

²² *Calder v. Bull*, 3 Dall. 390-393, 1 L. ed. 648; *Ogden v. Saunders*, 12 Wheat. 266, 6 L. ed. 606; *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876; *Baltimore etc. R. R. v. Nesbit*, 10 How. 402, 13 L. ed. 469; *Carpenter v. Pennsylvania*, 17 How. 463, 15 L. ed. 127; *In re Sawyer*, 124 U. S. 219, 8 S. Ct. 492, 31 L. ed. 42; *Locke v. New Orleans*, 4 Wall. 172, 18 L. ed. 334; *Albee v. May*, 2 Paine, 74, Fed. Cas. No. 135; *United States v. Gilbert*, 2 Sum. 101, Fed. Cas. No. 15,204; *Society v. Wheeler*, 2 Gall. 105, Fed. Cas. No. 13,156; *Aldridge v. Tusculumbia etc. R. R.*, 2 Stew. & P. 199, 29 Am. Dec. 312; *Bridgeport v. Hubbell*, 5 Conn. 240; *Aycock v. Martin*, 37 Ga. 124; *Boston v. Cummins*, 16 Ga. 107, 60 Am. Dec. 720; *Coles v. Madison Co.*, Breese, 156, 12 Am. Dec. 163; *Henderson etc. R. R. v. Dickerson*, 17 B. Mon. 177, 66 Am. Dec. 149; *Baughner v. Nelson*, 9 Gill, 299, 52 Am. Dec. 698; *Scott v. Smart*, 1 Mich. 302; *McCormick v. Pickering*, 4 N. Y. 276; *Grimm v. Wiessenberg Sch. Dist.*, 57 Pa. St. 435, 98 Am. Dec. 239; *Lynn v. State*, 84 Md. 67, 35 Atl. 22; *People v. Howker*, 152 N. Y. 234, 46 N. E. 608.

^{23a} *Locke v. New Orleans*, 4 Wall. 173, 18 L. ed. 334; *United States v. Hughes*, 8 Ben. 29, Fed. Cas. No. 15,416.

²⁴ *In re Murphy*, Woolw. 148, Fed. Cas. No. 9947.

²⁵ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

²⁶ *Cummings v. Missouri*, 4 Wall. 328, 18 L. ed. 356; *Burgess v. Salmon*, 97 U. S. 385, 24 L. ed. 1104.

²⁷ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366; *Pierce v. Carskadon*, 16 Wall. 239, 21 L. ed. 276.

²⁸ *State v. Bell*, Phill. (N. C.) 81; *State v. Paul*, 5 R. I. 190.

providing a penalty for failure to furnish information is prospective as to its criminal operation,²⁹ and a statute prohibiting sales of liquor is not objectionable because it may operate upon liquors previously manufactured.³⁰

²⁹ *State v. Bell*, Phil. (N. C.) 81.

³⁰ *State v. Paul*, 5 R. I. 190.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinafter directed to be taken.*

It was with the idea that the power of direct taxation should be exercised only in cases of "absolute necessity" that the framers of the constitution inserted this clause limiting the taxing power of Congress.¹ The original draft of the instrument did not contain the words "or other direct tax"; this phrase was inserted to avoid any possible misconstruction which would narrow the intention.² A capitation tax is a direct tax,^{2a} but the term "direct taxes" comprehends also taxes on land, and taxes on personal property by general valuation.³ A tax upon property holders in respect of their estates, real or personal, or of the rents therefrom, which cannot be avoided, is a direct tax; while a tax paid primarily by persons who can shift the burden upon others, or who are not under compulsion to pay, is an indirect tax.⁴

A tax upon the business of insurance companies is not a direct tax, but a duty or excise, and is valid;⁵ so also as to a tax upon bank circulation;⁶ a stamp tax imposed upon

¹ Documentary Hist. Const., vol. III, p. 578; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 547, 15 S. Ct. 673, 39 L. ed. 759; *Hyde v. Continental Trust Co.*, 157 U. S. 654, 15 S. Ct. 717, 39 L. ed. 845.

² Documentary Hist. Const., vol. III, p. 747.

^{2a} *Hylton v. United States*, 3 Dall. 171, 1 L. ed. 556.

³ *Veazie Bank v. Fenno*, 8 Wall. 547, 19 L. ed. 482; *Loughborough v. Blake*, 5 Wheat. 335, 5 L. ed. 98; *Springer v. United States*, 102 U. S. 602, 26 L. ed. 253; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 558, 15 S. Ct. 673, 39 L. ed. 759; *Hyde v. Continental Trust Co.*, 157 U. S. 558, 15 S. Ct. 717, 39 L. ed. 845; *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 637, 15 S. Ct. 912, 39 L. ed. 1108.

⁴ *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 558, 15 S. Ct. 673, 39 L. ed. 759; *Hyde v. Continental Trust Co.*, 157 U. S. 654, 15 S. Ct. 717, 39 L. ed. 845; *Travelers' Ins. Co. v. Fricke*, 99 Wis. 377, 74 N. W. 375, 41 L. R. A. 557; *High v. Coyne*, 93 Fed. 451.

⁵ *Pacific Ins. Co. v. Soule*, 7 Wall. 446, 19 L. ed. 95.

⁶ *Veazie Bank v. Fenno*, 8 Wall. 547, 19 L. ed. 482; *Central etc. Bank v. United States*, 137 U. S. 364, 11 S. Ct. 126, 34 L. ed. 703.

* See, also, art. I, § 2, cl. 3, as to apportionment.

board of trade sales,⁷ and a tax upon alien passengers from a foreign port.⁸ A tax upon carriages is also an excise, and therefore not a direct tax.⁹ A direct tax, however, cannot be taken out of the constitutional prohibition because of the fact that the particular form of tax was unknown at the time the prohibition was made.¹⁰ All such taxes, whatever the form they assume, must be laid by the rule of apportionment.¹¹

A tax upon the income of real or personal property is as much a direct tax as a tax imposed upon the property itself.¹² An inheritance tax is not laid upon property but is an excise duty upon the succession or devolution, and so not a direct tax,¹³ and the fact that such a tax is made a lien upon the property transmitted does not change its character, that being, merely an appropriate means of enforcing its collection.¹⁴

A tax levied on tobacco by a war revenue act "in lieu of the tax now imposed by law" is not a direct tax within this clause.¹⁵ Nor is a tax imposed by such an act direct because required to be measured by gross receipts.¹⁶

⁷ *Nicol v. Ames*, 173 U. S. 523, 19 S. Ct. 522, 43 L. ed. 786.

⁸ *Head Money Cases*, 18 Fed. 135.

⁹ *Hylton v. United States*, 3 Dall. 175, 1 L. ed. 556.

¹⁰ *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 632, 15 S. Ct. 912, 39 L. ed. 1108.

¹¹ *License Cases*, 5 Wall. 471, 18 L. ed. 497; *De Treville v. Smalls*, 98 U. S. 517, 25 L. ed. 174.

¹² *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 573, 15 S. Ct. 673, 39 L. ed. 759 (overruling *Scholey v. Rew*, 23 Wall. 347, 22 L. ed. 99, and *Springer v. United States*, 102 U. S. 602, 26 L. ed. 253, upon this point); *Hyde v. Continental Trust Co.*, 157 U. S. 654, 15 S. Ct. 717, 39 L. ed. 945; *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 637, 15 S. Ct. 912, 39 L. ed. 1108; *Hancock v. Singer Mfg. Co.*, 62 N. J. L. 343, 41 Atl. 852, 42 L. R. A. 852.

¹³ *Scholey v. Rew*, 23 Wall. 346, 22 L. ed. 99; *Knowlton v. Moore*, 178 U. S. 83, 20 S. Ct. 747, 44 L. ed. 969; *Murdock v. Ward*, 178 U. S. 146, 44 L. ed. 1009; *High v. Coyne*, 93 Fed. 451; *State v. Hamlin*, 86 Me. 498, 41 Am. St. Rep. 571, 30 Atl. 77; *Minot v. Winthrop*, 162 Mass. 118, 38 N. E. 514; *Gelsthorpe v. Furnell*, 20 Mont. 307, 51 Pac. 269; *State v. Alston*, 94 Tenn. 681, 30 S. W. 751, 28 L. R. A. 178.

¹⁴ *Scholey v. Rew*, 23 Wall. 347, 22 L. ed. 99.

¹⁵ *Patton v. Brady*, 184 U. S. 608, 22 S. Ct. 493, 46 L. ed. 713.

¹⁶ *Spreckles etc. Co. v. McClain*, 113 Fed. 244.

5. No tax or duty shall be laid on articles exported from any State.

This clause is the only positive prohibition against taxation by Congress; Congress has full power to tax everything except exports, the clauses requiring uniformity and apportionment not being strictly limitations upon power, but merely prescribing modes of exercise.¹ The object of this prohibition was to preclude interference with exports by Congress.² A stamp tax imposed on foreign bills of lading is in effect a tax or duty upon exports, and so void;³ but an act requiring the stamping of all packages of tobacco intended for export, the object being to prevent fraud, is not a tax upon exports.⁴

The mere intention to export does not bring goods which are still in a factory within the prohibition.⁵ So where spirits are lost by evaporation before giving a bond for export, a tax upon such loss is not repugnant to this clause.⁶ An act imposing a tax upon goods sent out of the state is void;⁷ but an act regulating intercourse with insurrectionary states and imposing a duty thereon is not objectionable.⁸

¹ *United States v. Vassar*, 5 Wall. 471, 16 L. ed. 497; *Lane County v. Oregon*, 7 Wall. 77, 19 L. ed. 101; *Veazie Bank v. Fenno*, 8 Wall. 540, 19 L. ed. 482; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 557, 15 S. Ct. 673, 39 L. ed. 845.

² *Documentary Hist. Const.*, vol. III, pp. 542-545, 578-580; *Hylton v. United States*, 3 Dall. 171, 1 L. ed. 556.

³ *Almy v. California*, 24 How. 174, 16 L. ed. 644; *Fairbank v. United States*, 181 U. S. 305, 21 S. Ct. 648, 45 L. ed. 862.

⁴ *Pace v. Burgess*, 92 U. S. 376, 23 L. ed. 657; *Turpin v. Burgess*, 117 U. S. 505, 6 S. Ct. 835, 29 L. ed. 988; *Burwell v. Burgess*, 32 Gratt. 478.

⁵ *Turpin v. Burgess*, 117 U. S. 507, 6 S. Ct. 836, 29 L. ed. 988; *Myers v. Baltimore County*, 83 Md. 392, 55 Am. St. Rep. 354, 35 Atl. 146, 34 L. R. A. 309.

⁶ *Thompson v. United States*, 142 U. S. 478, 12 S. Ct. 299, 35 L. ed. 1084; *Chrystal Spring etc. Co. v. Cox*, 49 Fed. 561.

⁷ *Commonwealth v. Delaware etc. Ry.*, 1 Pearson, 356; *Commonwealth v. Erie Ry.*, 1 Pearson, 345; *Commonwealth v. Pennsylvania etc. Ry.*, 1 Pearson, 379.

⁸ *Folsom v. United States*, 4 Ct. of Cl. 366.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

Preference of Ports.

The prohibition contained in this clause is a limitation upon the powers of Congress and not upon those of the states,¹ the object being to restrain Congress from fostering or oppressing one port or the commerce of one state and thus destroying equality and uniformity as to levies of contribution from foreign commerce.² Discrimination as between states is what is prohibited, not discrimination as between individual ports in the same or different states, and Congress is not forbidden to make a port in one state a port of entry, while refusing to do so as to a port in another state;³ nor does the clause operate to prevent incidental advantages to the ports of one state resulting from commerce legislation,⁴ or to acts directly benefiting the ports of one state and only incidentally injuring those of another.⁵

The preservation of the commercial equality of the states is aimed at, and legislation tending directly to destroy that equality is what is prohibited.⁶ An act of Congress legalizing a bridge across a navigable stream does not have this effect and so does not come within the prohibition.⁷

— Entry, Clearance and Payment of Duties.

Under this part of the clause the privileges and immunities of vessels entering or clearing must be common and equal in all

¹ *Munn v. Illinois*, 94 U. S. 135, 24 L. ed. 77; *Morgan etc. Co. v. Louisiana*, 118 U. S. 467, 6 S. Ct. 1114, 30 L. ed. 237; *Johnson v. Chicago etc. Co.*, 119 U. S. 400, 7 S. Ct. 254, 30 L. ed. 447; *Alexander v. R. R. Co.*, 3 Strob. 594.

² *Munn v. Illinois*, 94 U. S. 135, 24 L. ed. 77; *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *Documentary Hist. Const.*, vol. III, pp. 619, 628, 660, 748.

³ *Pennsylvania v. Wheeling Br.*, 18 How. 435, 15 L. ed. 435.

⁴ *Pennsylvania v. Wheeling Br.*, 18 How. 435, 15 L. ed. 435.

⁵ *South Carolina v. Georgia*, 93 U. S. 13, 23 L. ed. 782.

⁶ *Passenger Cases*, 7 How. 283, 12 L. ed. 712.

⁷ *Pennsylvania v. Wheeling Br.*, 18 How. 435, 15 L. ed. 435.

the ports of the several states, so far as congressional legislation is concerned,⁸ and it is only the port to or from which a vessel is bound that is to be considered in relation to entry, clearance or payment of duties.⁹ The states are not restricted in the regulation of their internal affairs,¹⁰ or in the exercise of their police powers.¹¹ Accordingly a state quarantine law affecting vessels entering its ports is valid,¹² and a state pilot law is not open to the objection that it gives a preference to the ports of one state over those of another in exempting certain vessels from the payment of fees.¹³ "Of another" and "duties in another," relate to commerce and navigation.¹⁴

⁸ *Pennsylvania v. Wheeling Br.*, 18 How. 435, 15 L. ed. 435.

⁹ *United States v. The William*, 2 Hall. L. J. 255, Fed. Cas. No. 16,700.

¹⁰ *Munn v. Illinois*, 94 U. S. 135, 24 L. ed. 77; *Johnson v. Chicago Elevator Co.*, 119 U. S. 400, 7 S. Ct. 254, 30 L. ed. 447; *Baker v. Wise*, 16 Gratt. 80; *State v. Charleston*, 10 Rich. 240; *People v. Tax Commissioners*, 17 N. Y. Supp. 255.

¹¹ *Guy v. Baltimore*, 100 U. S. 443, 25 L. ed. 743; *Baker v. Wise*, 16 Gratt. 139.

¹² *Morgan etc. Co. v. Louisiana*, 118 U. S. 467, 6 S. Ct. 1114, 30 L. ed. 237.

¹³ *Cooley v. Board of Wardens*, 12 How. 314, 13 L. ed. 996.

¹⁴ *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Under this clause, money once in the treasury can only be withdrawn pursuant to an express appropriation by Congress;¹ but the restriction operates only upon the Treasury Department and does not restrain Congress from involving the government in liabilities to pay money to any extent.² The Secretary of the Treasury is prohibited from directing the payment of moneys not specifically appropriated by law;³ the mere direction that a claim be entered upon the books is not an appropriation giving authority to pay it.⁴

While Congress has the power to prevent the payment of claims by refusing to appropriate money therefor,⁵ an appropriation of a less amount than is specified by a law fixing compensation does not abrogate or suspend such law nor impair the validity of the claim,⁶ nor does the fact that the appropriation out of which the claim should have been paid has lapsed constitute a defense to the claim itself.⁷ Where an appropriation is insufficient to satisfy a claim, the claimant's remedy is by appeal to Congress.⁸ An act appropriating less than the amount recommended by the head of a department to the payment of

¹ *Knote v. United States*, 95 U. S. 154, 24 L. ed. 442; *Briggs' Case*, 14 Ct. of Cl. 48.

² *Collin's Case*, 14 Ct. of Cl. 568, 15 Ct. of Cl. 22; *Mitchell's Case*, 18 Ct. of Cl. 281.

³ *United States v. Guthrie*, 17 How. 304, 15 L. ed. 102.

⁴ *Reeside v. Walker*, 11 How. 291, 13 L. ed. 693, and see *State v. Kenney*, 9 Mont. 395, 24 Pac. 97; *Orr v. Quimby*, 54 N. H. 654.

⁵ *Hart's Case*, 16 Ct. of Cl. 459.

⁶ *United States v. Langston*, 118 U. S. 394, 6 S. Ct. 1135, 30 L. ed. 164.

⁷ *Briggs' Case*, 15 Ct. of Cl. 48.

⁸ *Dunwoody v. United States*, 143 U. S. 586, 12 S. Ct. 465, 36 L. ed. 269.

a claim does not operate as an adoption of the recommendation or a recognition of the amount therein named as due.⁹

Congress may recognize and pay a claim of an equitable, moral or honorary nature, and whether the facts are such as to authorize relief is for Congress alone to determine,¹⁰ and where Congress directs a specific sum to be paid to a certain person, neither the Secretary of the Treasury nor any court has any discretion to determine whether the person is entitled to receive it.¹¹ A pardon by the President cannot restore the proceeds of confiscated property already paid into the United States treasury; to accomplish restoration of such proceeds appropriation by law is necessary.¹²

Where a claim has been audited, allowed, and paid in the usual manner, the government cannot reclaim the money without showing that payment was induced by fraud or by a mistake of fact.¹³

⁹ *Nutt v. United States*, 125 U. S. 655, 8 S. Ct. 997, 31 L. ed. 821.

¹⁰ *United States v. Realty Co.*, 163 U. S. 439, 444, 16 S. Ct. 1120, 41 L. ed. 215; *Allen v. Smith*, 173 U. S. 393, 19 S. Ct. 447, 43 L. ed. 741.

¹¹ *United States v. Price*, 116 U. S. 44, 6 S. Ct. 235, 29 L. ed. 541; *United States v. Realty Co.*, 163 U. S. 441, 16 S. Ct. 1120, 41 L. ed. 215.

¹² *Knote v. United States*, 95 U. S. 154, 24 L. ed. 442; *Austin v. United States*, 155 U. S. 427, 15 S. Ct. 172, 39 L. ed. 206.

¹³ *United States v. Okmstead*, 118 Fed. 433.

8. No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

The original draft of the constitution contained only the prohibition against grants of titles of nobility.¹ The insertion of the remainder of the clause was prompted by a recognition of the "necessity of preserving foreign ministers and other officers of the United States independent of external influence."² A United States marshal cannot, during his tenure of office, represent a foreign nation as its commercial agent.³

¹ Documentary Hist. Const., vol. III, p. 450.

² Documentary Hist. Const., vol. III, p. 600.

³ 6 Opin. Atty. Gen. 409.

SECTION 10.

POWERS DENIED TO THE STATES.

1. Various acts prohibited.
2. Imposts or duties on imports or exports except for inspection.
3. Tonnage duties; keeping troops or ships of war; agreements or compacts; engaging in war.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Nature of State Governments.

A state, in the sense of the constitution, is a political community of free citizens occupying definite territory and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed, and the union of such states, under the constitution, forms the United States.¹ With respect to the general government, the states are not sovereign powers, but members of the Union whose constitution is supreme;² but as respects their local government, they are sovereign within their own limits, and foreign as to each other.³ This sovereignty of the states in their relations

¹ *Texas v. White*, 7 Wall. 721, 19 L. ed. 227; *Hall v. Hall*, 43 Ala. 502, 94 Am. Dec. 712.

² *Fletcher v. Peck*, 6 Cr. 136, 3 L. ed. 162.

³ *Buckner v. Finley*, 2 Pet. 591, 7 L. ed. 528; *Bank of United States v. Daniel*, 12 Pet. 54, 9 L. ed. 989; *Mahon v. Justice*, 127 U. S. 706, 8 S. Ct. 1204, 32 L. ed. 283; *Hatch v. Spofford*, 22 Conn. 497, 58 Am. Dec. 436; *SeEVERS v. Clement*, 28 Md. 434; *Smith v. Lathrop*, 44 Pa. St. 330, 84 Am. Dec. 450.

with each other, however, is qualified;⁴ they have surrendered their treaty-making powers to the general government,⁵ and they cannot declare war or authorize reprisals on other states.⁶

— Alliance or Confederation.

The union of the states is perpetual and indissoluble; upon the admission of a state the union between that state and the other states becomes complete,⁷ and a state has no right to secede.⁸ At no time were the rebellious states out of the Union.⁹ The attempt of those states to separate themselves from the Union did not destroy their identity as states, nor free them from the binding force of the constitution of the United States;¹⁰ their rights under the constitution were suspended, not destroyed, but their constitutional duties and obligations remained the same.¹¹ The action of the rebellious states in setting aside their former governments and constituting new ones, connected with another so-called central government, operated to suspend their practical relations with the Union, but did not

⁴ *Mahon v. Justice*, 127 U. S. 705, 8 S. Ct. 1204, 32 L. ed. 283.

⁵ *Holmes v. Jennison*, 14 Pet. 571, 10 L. ed. 579; *United States v. Rauscher*, 119 U. S. 412, 7 S. Ct. 237, 30 L. ed. 425; *In re Parrott*, 1 Fed. 481; *People v. Curtis*, 50 N. Y. 325, 10 Am. Rep. 486.

⁶ *Mahon v. Justice*, 127 U. S. 705, 8 S. Ct. 1204, 32 L. ed. 283.

⁷ *Texas v. White*, 7 Wall. 725, 726, 19 L. ed. 227; *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Daniels v. Tearney*, 102 U. S. 418, 26 L. ed. 187; *Pennywit v. Foote*, 27 Ohio St. 620, 22 Am. Rep. 352.

⁸ *White v. Hart*, 13 Wall. 651, 20 L. ed. 685; *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Sequestration Cases*, 30 Tex. 688, 98 Am. Dec. 494; *Chancely v. Bailey*, 37 Ga. 532; *Central R. R. v. Ward*, 37 Ga. 515; *Hood v. Maxwell*, 1 W. Va. 219.

⁹ *White v. Hart*, 13 Wall. 651, 20 L. ed. 685; *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Williams v. Bruffy*, 96 U. S. 188-190, 24 L. ed. 716; *State v. Bank of Tennessee*, 5 Baxt. 24; *Homestead Cases*, 22 Gratt. 283, 12 Am. Rep. 511.

¹⁰ *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Stewart v. Palmer*, 80 Va. 81.

¹¹ *White v. Hart*, 13 Wall. 651, 20 L. ed. 685; *Taylor v. Thomas*, 22 Wall. 490, 22 L. ed. 789; *Oliver v. Memphis etc. R. R.* 30 Ark. 131.

in any degree effect a separation,¹² and the constitution in force before the Ordinance of Secession continued in force after the overthrow of the Rebellion.¹³

The Ordinance of Secession and all acts intended to give it effect were null and void.¹⁴ It did not abrogate the constitution and laws then in force,¹⁵ nor release citizens from their obligation of loyalty to the government of the United States.^{15a} The only effect of the ordinance was to suspend the rights of the citizens of the rebellious states as citizens of the United States.¹⁶ The state governments continued to exist *de jure*, and their acts were as valid and binding on them as if no attempt at secession had been made.¹⁷ Accordingly the judgment of a state supreme court, rendered after the Ordinance of Secession, was not avoided thereby, nor was the relation of that court to the appellate power of the United States supreme court affected;¹⁸ a sale under execution on a judgment during the Rebellion passed a good title,¹⁹ and the judgment of a court under

¹² *Shortridge v. Macon*, Chase, 136, 1 Abb. U. S. 58, Fed. Cas. No. 12812.

¹³ *Scruggs v. Huntsville*, 45 Ala. 220; *President v. State*, 45 Ala. 399.

¹⁴ *Mauran v. Alliance Ins. Co.*, 6 Wall. 13, 18 L. ed. 836; *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Texas v. White*, 7 Wall. 726, 19 L. ed. 227; *Pennywit v. Foote*, 27 Ohio St. 620, 22 Am. Rep. 352; *United States v. Cathcart*, 1 Bond. 556, Fed. Cas. No. 14,756; *United States v. Morrison*, Chase, 521, Fed. Cas. No. 15,817; *Hall v. Hall*, 43 Ala. 498, 94 Am. Dec. 708; *Ex parte Norton*, 44 Ala. 180; *Scruggs v. Mayor*, 45 Ala. 222; *Thomas v. Taylor*, 42 Miss. 704, 2 Am. Rep. 635.

¹⁵ *Harlan v. State*, 41 Miss. 566.

^{15a} *White v. Hart*, 13 Wall. 651, 20 L. ed. 685; *United States v. Cathcart*, 1 Bond. 556, Fed. Cas. No. 14,756; *Homestead Cases*, 23 Gratt. 266, 12 Am. Rep. 507.

¹⁶ *Texas v. White*, 7 Wall. 727, 19 L. ed. 227; *Perkins v. Rogers*, 35 Ind. 163, 9 Am. Rep. 670.

¹⁷ *White v. Cannon*, 6 Wall. 450, 18 L. ed. 923; *Hawkins v. Filkins*, 24 Ark. 286; *Harlan v. State*, 41 Miss. 566; *State v. Sears*, Phil. (N. C.) 146.

¹⁸ *White v. Cannon*, 6 Wall. 450, 18 L. ed. 923.

¹⁹ *Parks v. Coffey*, 52 Ala. 36.

a secession government is not attackable collaterally.²⁰ Only such judicial acts as were hostile in their purpose or mode of enforcement, to the authority of the national government, or which impaired rights of citizens under the federal constitution, were void.²¹

The so-called government established by the states in rebellion and designated the Confederate States of America never attained to the dignity of a *de facto* government in such a sense as to give legal efficacy to its acts; it was simply an armed resistance to sovereign authority,²² and never had any existence except as organized treason.²³ It could not divest any right or property held under United States laws,²⁴ nor could it lawfully sequester the property of a loyal citizen as an alien enemy,²⁵ nor take, hold or convey a valid title to property, real or personal,²⁶ and its acts of confiscation were null and void.²⁷

The Confederate government was at no time a *de facto* government, either as a government which represented the nation, expelling public authorities, making treaties, and receiving recognition as an independent power, or which separated itself and

²⁰ *Pepin v. Lachenmeyer*, 45 N. Y. 34; but see *Pennywit v. Foote*, 27 Ohio St. 630, 22 Am. Rep. 361.

²¹ *Taylor v. Thomas*, 22 Wall. 491, 22 L. ed. 789.

²² *Hickman v. Jones*, 9 Wall. 200, 19 L. ed. 515; *Williams v. Bruffy*, 96 U. S. 176, 24 L. ed. 716; *Dewing v. Perdicaries*, 96 U. S. 195, 24 L. ed. 654; *Donegan v. Wood*, 49 Ala. 249, 20 Am. Rep. 278; *United States v. Stark*, 27 Fed. Cas. 330; *McCracken v. Poole*, 19 La. Ann. 359; *Bailey v. Milner*, 35 Ga. 330; *Thornburg v. Harris*, 3 Cold. 157; *Keppel v. Petersburg R. R.*, Chase, 167, Fed. Cas. No. 7722.

²³ *Sprott v. United States*, 20 Wall. 464, 20 L. ed. 371; *Bragg v. Tufts*, 49 Ark. 562, 6 S. W. 161.

²⁴ *United States v. Koehler*, 9 Wall. 86, 19 L. ed. 574; *Vance v. Burtis*, 39 Tex. 91.

²⁵ *Central etc. R. R. v. Ward*, 37 Ga. 515; *Sequestration Cases*, 30 Tex. 688, 98 Am. Dec. 494; *Vance v. Burtis*, 39 Tex. 88; *Shortridge v. Macon*, Chase, 136, 1 Abb. U. S. 58, Fed. Cas. No. 12,812.

²⁶ *Sprott v. United States*, 20 Wall. 463, 20 L. ed. 371; *Lamar v. Micou*, 112 U. S. 476, 5 S. Ct. 232, 28 L. ed. 751.

²⁷ *Keppel v. Petersburg etc. R. R.*, Chase, 167, Fed. Cas. No. 7722; *Penn v. Tollison*, 26 Ark. 545; *Thompson v. Mankin*, 26 Ark. 586, 7 Am. Rep. 628; *Timms v. Grace*, 26 Ark. 598; *Perdicaries v. Charleston etc. Co.*, Chase, 435, Fed. Cas. No. 10,974.

successfully established a permanent independence.²⁸ The only sense in which such a character can be attributed to it is in so far as it established itself by paramount military force, and so long as it could compel obedience to its authority.²⁹ To this extent, and for the purpose of protecting persons acting under orders from its military authorities, it may be said to have been a *de facto* government.³⁰

The government of the individual states in rebellion were not *de facto*;³¹ the legislature of such a state, upon its becoming a member of the insurrectionary confederacy, ceased to represent the state as a member of the federal Union,³² and all its acts in furtherance of the Rebellion were invalid,³³ including issues of bonds and treasury notes under its authority.³⁴ Contracts in aid of the Rebellion were also void,³⁵ and obligations incurred by a corporation for that purpose were void;³⁶ but it will not

²⁸ *Williams v. Bruffy*, 96 U. S. 185, 24 L. ed. 716.

²⁹ *Thorington v. Smith*, 8 Wall. 10, 19 L. ed. 361; *Hubbard v. Hamden Exp. Co.*, 10 R. I. 249; *Smith v. Brazelton*, 1 Heisk. 67, 3 Am. Rep. 639; *Newton v. Bushong*, 22 Gratt. 633, 12 Am. Rep. 556.

³⁰ *Ford v. Surget*, 97 U. S. 605, 24 L. ed. 1018; See, also, *Underhill v. Hernandez*, 168 U. S. 253, 18 S. Ct. 84, 42 L. ed. 456, affirming, 65 Fed. 582, 38 L. B. A. 405.

³¹ *Penn v. Tollison*, 26 Ark. 545; *Thompson v. Mankin*, 26 Ark. 586, 7 Am. Rep. 628.

³² *Taylor v. Thomas*, 22 Wall. 489, 22 L. ed. 789, affirming 42 Miss. 651, 2 Am. Rep. 625.

³³ *Texas v. White*, 7 Wall. 733, 19 L. ed. 227; *Taylor v. Thomas*, 22 Wall. 488, 22 L. ed. 789; *Hatch v. Burroughs*, 1 Woods, 445, Fed. Cas. No. 6203; *Isaacs v. Richmond*, 90 Va. 31, 17 S. E. 761; *Mosely v. Tuthill*, 45 Ala. 647, 6 Am. Rep. 714; *Mississippi etc. R. R. v. State*, 46 Miss. 218; *Alexander v. Lewis*, 47 Tex. 490.

³⁴ *Hanauer v. Woodruff*, 15 Wall. 442, 21 L. ed. 224; *Branch v. Haas*, 4 Woods, 589, 16 Fed. 55; *Thomas v. Taylor*, 42 Miss. 651, 2 Am. Rep. 625; *Leak v. Commissioners*, 64 N. C. 132; *Rand v. State*, 65 N. C. 194; *Ray v. Thompson*, 43 Ala. 434.

³⁵ *Hanauer v. Doane*, 12 Wall. 345, 20 L. ed. 439; *Confiscation Cases*, 1 Woods, 226, Fed. Cas. No. 3097; *Whitis v. Polk*, 36 Tex. 628.

³⁶ *Bibb v. Commissioners*, 44 Ala. 119; *Evans v. Richmond*, Chase. 551, Fed. Cas. No. 4570.

be presumed that notes issued by a bank in an insurrectionary state were issued for an unlawful purpose.³⁷

While, however, the government of the United States is not bound to recognize as valid any action by a state engaged in rebellion,³⁸ yet laws were upheld so far as they did not tend to impair the supremacy of the national government or the constitutional rights of citizens;³⁹ e. g., statutes necessary for the protection of persons and property;⁴⁰ laws for the regulation of business transactions;⁴¹ statutes regulating the creation of corporations;⁴² statutes in aid of railroad corporations.⁴³

³⁷ *Keith v. Clark*, 97 U. S. 466, 24 L. ed. 1071; *Clark v. Keith*, 106 U. S. 465, 1 S. Ct. 569, 27 L. ed. 302.

³⁸ *Thompson v. Mankin*, 26 Ark. 586, 7 Am. Rep. 628.

³⁹ *Horn v. Lockhardt*, 17 Wall. 580, 21 L. ed. 657; *Huntington v. Texas*, 16 Wall. 413, 21 L. ed. 316; *Williams v. Bruffy*, 96 U. S. 176, 24 L. ed. 716.

⁴⁰ *Texas v. White*, 7 Wall. 733, 19 L. ed. 227; *Taylor v. Thomas*, 22 Wall. 489, 22 L. ed. 789; *Cook v. Oliver*, 1 Woods, 437, Fed. Cas. No. 3164; *Chappell v. Williamson*, 49 Ala. 153; *Sequestration Cases*, 30 Tex. 688, 98 Am. Dec. 494; *Van Epps v. Walsh*, 1 Woods, 607, Fed. Cas. No. 16,850; *Calhoun v. Kellog*, 41 Ga. 240; *Morgan v. Keenan*, 1 S. C. 331; *Clay v. Robinson*, 7 W. Va. 356.

⁴¹ *Thomas v. Richmond*, 12 Wall. 357, 20 L. ed. 453; *Sprott v. United States*, 20 Wall. 464, 22 L. ed. 371; *Hill v. Boyland*, 40 Miss. 618; *Buchanan v. Smith*, 43 Miss. 90; *Wallace v. State*, 33 Tex. 445.

⁴² *United States v. Insurance Cos.*, 22 Wall. 103, 22 L. ed. 816; *Frierson v. General Assembly*, 7 Heisk. 705.

⁴³ *Davis v. Gray*, 16 Wall. 226, 21 L. ed. 447.

Emit bills of credit;

Bills of Credit.

A bill of credit within the constitutional prohibition, is a paper issued by the state, on the faith of the state, and designed to circulate as money.¹ All three of these attributes must concur in the paper to render it objectionable under this clause.² It must be issued by the state,³ or by state officers under state authority; e. g., state treasurer.⁴

Bills issued by state banks are not bills of credit,⁵ although the state guarantees their payment.⁶ The fact that the state is the sole stockholder in the bank, whose officers are elected by the state legislature, is immaterial;⁷ a state, by becoming interested, with others, in a corporation, or by acquiring all the capital stock does not impart to the corporation any of its attributes of sovereignty.⁸

¹ *Craig v. Missouri*, 4 Pet. 433, 7 L. ed. 903; *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709; *Woodruff v. Trapnall*, 10 How. 190, 13 L. ed. 383; *Wesley v. Eells*, 177 U. S. 370, 20 S. Ct. 661, 44 L. ed. 810, affirming 90 Fed. 157; *Bailey v. Milner*, 35 Ga. 330, 1 Abb. U. S. 263, Fed. Cas. No. 740; *Bragg v. Tuffts*, 49 Ark. 563, 6 S. W. 162; *City Bank v. Mahan*, 21 La. Ann. 752.

² *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709.

³ *Curran v. Arkansas*, 15 How. 318, 14 L. ed. 705; *Philadelphia Ry. Co. v. Morrison*, 19 Fed. Cas. 488.

⁴ *Wesley v. Eells*, 177 U. S. 370, 20 S. Ct. 661, 44 L. ed. 810; *Bragg v. Tuffts*, 49 Ark. 563, 6 S. W. 162.

⁵ *Curran v. Arkansas*, 15 How. 318, 14 L. ed. 705; *Veazie Bank v. Fenno*, 8 Wall. 552, 19 L. ed. 482; *Nathan v. Louisiana*, 8 How. 81, 12 L. ed. 992; *Owen v. Branch Bank*, 3 Ala. 256; *McFarland v. State Bank*, 4 Ark. 44, 37 Am. Dec. 761; *Bank v. Spilman*, 3 Dana, 150; *Lampton v. Bank*, 2 Litt. 300; *Bills v. State*, 2 McCord, 12; *Craighead v. Bank*, 1 Meigs, 199; *Vermont Bank v. Porter*, 5 Day, 316, 5 Am. Dec. 157. But see *Linn v. State Bank*, 1 Scam. 90, 25 Am. Dec. 72; *Bank of Kentucky v. Clark*, 4 Mo. 61, 28 Am. Dec. 347.

⁶ *Darrington v. Bank of Alabama*, 13 How. 16, 14 L. ed. 30.

⁷ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709; *Darrington v. Bank of Alabama*, 13 How. 14, 14 L. ed. 30; *Owen v. Branch Bank*, 3 Ala. 262; *McFarland v. State Bank*, 4 Ark. 51, 37 Am. Dec. 765; *Jones v. Bank of Tennessee*, 8 B. Mon. 123, 46 Am. Dec. 541.

⁸ *Briscoe v. Bank of Kentucky*, 11 Pet. 325, 9 L. ed. 709; *Curran v. Arkansas*, 15 How. 309, 14 L. ed. 705; *Davis v. Gray*, 16 Wall. 232,

To come within the prohibition a bill must be issued by a state, on its faith and credit, and be designed to circulate as money;⁹ but this clause does not forbid the states to execute instruments binding themselves to pay money at a future day for services rendered or for money borrowed.¹⁰ A treasury note issued as evidence of a loan, if not intended as a circulating medium, is not a bill of credit;¹¹ so also as to a bill drawn upon a particular fund.¹² Nor is a treasury warrant drawn in payment of an appropriation made by the legislature and payable if there be funds in the treasury, objectionable as a bill of credit.¹³

A state may authorize municipalities to issue certificates of indebtedness,¹⁴ and to pledge their real estate for the redemption of such certificates.¹⁵

Besides the issue of such paper by the state there must be the intent to have it circulate as money,¹⁶ receivable for all debts and taxes, salaries and fees.¹⁷ A state cannot by indirect

21 L. ed. 447; *Southern Ry. v. North Carolina Ry.*, 81 Fed. 600; *Durham v. Railroad*, 108 N. C. 402, 12 S. E. 1041; *Owen v. Branch Bank*, 3 Ala. 258; *Central Bank v. Little*, 11 Ga. 346. But see *Bank of Kentucky v. Wister*, 2 Pet. 324, 7 L. ed. 437.

⁹ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709.

¹⁰ *Craig v. Missouri*, 4 Pet. 433, 7 L. ed. 903; *Virginia Coupon Cases*, 114 U. S. 270, 5 S. Ct. 903, 29 L. ed. 185; *Chaffin v. Taylor*, 116 U. S. 567, 6 S. Ct. 518, 29 L. ed. 727; *Woodruff v. Mississippi*, 162 U. S. 299, 16 S. Ct. 820, 40 L. ed. 973; *McCoy v. Washington Co.*, 3 Wall. Jr. 381, Fed. Cas. No. 8731; *Peyaud v. State*, 13 Miss. 491.

¹¹ *Ramsey v. Cox*, 28 Ark. 369; *Green v. Sizer*, 40 Miss. 530.

¹² *Gowen v. Shute*, 4 Baxt. 63.

¹³ *Houston etc. R. R. v. Texas*, 177 U. S. 83, 20 S. Ct. 545, 44 L. ed. 673; *Peyaud v. State*, 13 Miss. 491.

¹⁴ *Mayor v. State*, 15 Md. 376; *Smith v. New Orleans*, 23 La. Ann. 5; *Delafield v. State*, 26 Wend. 192.

¹⁵ *Smith v. New Orleans*, 23 La. Ann. 5.

¹⁶ *Woodruff v. Trapnall*, 10 How. 205, 13 L. ed. 383; *Poindexter v. Greenhow*, 114 U. S. 284, 5 S. Ct. 910, 29 L. ed. 185; *Ramsey v. Cox*, 28 Ark. 369; *Indiana v. Woram*, 6 Hill, 33.

¹⁷ *Craig v. Missouri*, 4 Pet. 433, 7 L. ed. 903; *In re Milner*, 1 Abb. U. S. 263, Fed. Cas. No. 740; *City Bank v. Mahan*, 21 La. Ann. 751.

means, or by any device, emit bills of credit.¹⁸ The form of the paper is immaterial; if it is issued by the state on its credit and in fact designed to circulate as money, it is void.¹⁹ So railroad scrip resembling bank notes, issued in various denominations, based upon the pledge of the state, receivable for dues and taxes to the state, and when so received available for the payment of claims against the state treasury, are clearly designed to circulate as money and are void;²⁰ paper need not be made legal tender in terms in order to come within the denomination of a bill of credit.²¹ Where, however, warrants drawn on the treasury are receivable in payment of taxes due the state, but provision is made for their retirement when so taken, this clause is not violated;²² the use of the words "as money" in making such warrants receivable in payment of taxes is not conclusive of an intent to make them operate as currency generally.²³ So, also, coupons for interest on state bonds, negotiable by delivery merely, and receivable in payment of taxes, are not issued as a substitute for money and are not bills of credit.²⁴

Treasury notes issued by the Confederate states, not being issued by "a state," were not bills of credit.²⁵ The invalidity of such notes as consideration for contracts was placed upon the

¹⁸ *Craig v. Missouri*, 4 Wheat. 433, 7 L. ed. 903; *Bank v. Clarke*, 4 Mo. 59, 28 Am. Dec. 345; *Griffith v. Bank*, 4 Mo. 255.

¹⁹ *Craig v. Missouri*, 4 Pet. 410, 7 L. ed. 903; *Byrne v. Missouri*, 8 Pet. 40, 8 L. ed. 859.

²⁰ *Weasley v. Eells*, 177 U. S. 370, 20 S. Ct. 661, 44 L. ed. 810, affirming 90 Fed. 151.

²¹ *Craig v. Missouri*, 4 Pet. 436, 7 L. ed. 903; *Byrne v. Missouri*, 8 Pet. 42, 8 L. ed. 859; *Bills v. State*, 2 McCord, 12.

²² *Houston etc. R. R. v. Texas*, 177 U. S. 83, 20 S. Ct. 545, 44 L. ed. 673.

²³ *Houston etc. R. R. v. Texas*, 177 U. S. 84, 20 S. Ct. 545, 44 L. ed. 673; *Galveston etc. R. R. v. Texas*, 177 U. S. 103, 20 S. Ct. 559, 44 L. ed. 690.

²⁴ *Poindexter v. Greenhow*, 114 U. S. 284, 5 S. Ct. 910, 29 L. ed. 185.

²⁵ *Bailey v. Milner*, 1 Abb. U. S. 263, 35 Ga. 332, Fed. Cas. No. 740. But see *Hale v. Huston*, 44 Ala. 139, 4 Am. Rep. 127; *Thornburg v. Harris*, 3 Cold. 160.

ground that they were issued in aid of the Rebellion.²⁶ A certificate of deposit is not a note issued to circulate as money, and so is not a bill of credit.²⁷

²⁶ *Hanauer v. Woodruff*, 15 Wall. 442, 21 L. ed. 224; *Branch v. Haas*, 4 Woods, 589, 16 Fed. 55; *Bailey v. Milner*, 1 Abb. U. S. 263, 35 Ga. 332, Fed. Cas. No. 740.

²⁷ *Hunt, Appellant*, 141 Mass. 520, 6 N. E. 556.

Coin money; * * * make anything but gold and silver coin a tender in payment of debts;

Coinage and Legal Tender.

The act of coining money, being prohibited, cannot be done by a state, either directly or indirectly.¹ The term "money" means gold, silver and copper coins,² and to "coin money" is to mold into form a metallic substance of intrinsic value.³ The power to coin money was denied to the states and vested in Congress (see art. I, § 8, cl. 5) in order to create and preserve the uniformity and purity of a standard of value, and to prevent the irregularities and confusion incident to different views of policy on the part of the several states.⁴

The same rule applies as to legal tender; a statute attempting, by indirect means, to make anything but gold and silver a legal tender is unconstitutional;⁵ e. g., a statute requiring a bank to receive its own notes in payment of the notes of another bank;⁶ a statute authorizing the tender of the scrip of a corporation for taxes or assessments;⁷ a statute providing for a stay of execution unless the creditor accepts payment in state bank paper.⁸

This clause imposes no duty to pass any laws on the subject of tender; it is a prohibition against affirmative legislation creating or authorizing a tender.⁹ So a state may incorporate a bank and authorize it to issue notes, and while a provision

¹ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709.

² *Maynard v. Newman*, 1 Nev. 271; *Thayer v. Hedges*, 22 Ind. 301; *Hague v. Powers*, 39 Barb. 458; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 430.

³ *Griswold v. Hepburn*, 2 Duvall, 29.

⁴ *United States v. Marigold*, 9 How. 567.

⁵ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709; *Edwards v. Kearzey*, 96 U. S. 606, 24 L. ed. 793; *Lowry v. McGhee*, 8 Yerg. 242.

⁶ *Bank of State v. Bank of Cape Fear*, 13 Ired. 75.

⁷ *Gaines v. Rives*, 8 Ark. 220; *State v. Blackmo*, 8 Blackf. 246.

⁸ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709; *Townsend v. Townsend, Peck*, 1, 14 Am. Dec. 721; *Bailey v. Gentry*, 1 Mo. 164.

⁹ *Van Housan v. Kanouse*, 13 Mich. 303, 311.

making such notes legal tender would be void, it would not affect the validity of that part of the statute creating the bank and authorizing the issue of the notes.¹⁰ A provision in the charter making the bank's notes receivable in payment of debts due the state is not void as creating a legal tender.¹¹ Bank notes are not a legal tender; they are not money in the strict sense of the term, but by common usage they ordinarily pass as money and constitute a good tender unless objected to.¹²

¹⁰ *Briscoe v. Bank of Kentucky*, 11 Pet. 318, 9 L. ed. 709; *Woodruff v. Trapnall*, 10 How. 206, 13 L. ed. 383.

¹¹ *Woodruff v. Trapnall*, 10 How. 206, 13 L. ed. 383; *Paup v. Drew*, 10 How. 224, 13 L. ed. 394; *Trigg v. Drew*, 10 How. 224, 13 L. ed. 397; *Bush v. Shipman*, 5 Ill. 186.

¹² *Bank of United States v. Bank of Georgia*, 10 Wheat. 347, 6 L. ed. 334; *Woodruff v. Mississippi*, 162 U. S. 300, 16 S. Ct. 823, 40 L. ed. 973; *Corbitt v. Bank*, 2 Harr. (Del.) 252, 30 Am. Dec. 626; *People v. Mayhew*, 26 Cal. 663; *Jones v. Overstreet*, 4 T. B. Mon. 550; *Klauber v. Biggerstaff*, 47 Wis. 559, 32 Am. Rep. 778, 3 N. W. 361.

Any bill of attainder or ex post facto law.

Bill of Attainder.*

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.¹ It is not necessary that the punishment be inflicted absolutely in order to render legislation objectionable; the punishment may be conditional.² The constitution deals with substance, not form, and any statute depriving a citizen of rights for past misconduct is void, however disguised.³ The term "bill of attainder" embraces bills of pains and penalties,⁴ and comprehends laws confiscating property as well as those affecting the life of an individual.⁵ Any deprivation or suspension of an inalienable right is a punishment.⁶ The prohibition extends to laws depriving a party of the privilege of enforcing contracts because of prior acts;⁷ statutes depriving of the right to office for dueling.⁸

The so-called test-oath acts contravene this clause in excluding certain persons from practicing their professions for previous acts of rebellion,⁹ or depriving such persons of the right to a rehearing in civil suits or denying to nonresidents the right to appear and defend without taking the prescribed oath.¹⁰

This clause does not forbid a state to prescribe the necessary

¹ *Cummings v. Missouri*, 4 Wall. 277, 18 L. ed. 356.

² *Gaines v. Buford*, 1 Dana, 510.

³ *Cummings v. Missouri*, 4 Wall. 325, 18 L. ed. 356.

⁴ *Drehman v. Stifle*, 8 Wall. 601, 19 L. ed. 508, affirming 41 Mo. 184, 97 Am. Dec. 248; *In re Yang Sing* 13 Saw. 485, 36 Fed. 439; *Norris v. Doniphan*, 4 Met. (Ky.) 434.

⁵ *Fletcher v. Peck*, 6 Cr. 138, 3 L. ed. 162; *Ex parte Law*, 35 Ga. 302; *Myers v. Sanders*, 7 Dana, 519.

⁶ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *State v. Walbridge*, 119 Mo. 390, 41 Am. St. Rep. 667, 24 S. W. 458.

⁷ *McNealy v. Gregory*, 13 Fla. 417.

⁸ *Commonwealth v. Jones*, 10 Bush, 732.

⁹ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *Klinger v. Missouri*, 13 Wall. 257, 20 L. ed. 635; *Murphy's Case*, 41 Mo. 339; *State v. Heighland*, 41 Mo. 388.

¹⁰ *Pierce v. Carskaddon*, 16 Wall. 239, 21 L. ed. 276.

*See, also, art. I, § 9, cl. 3.

qualifications to entitle a person to practice his profession;¹¹ or to require pharmacists to register;¹² or to exclude ex-convicts from the practice of medicine;¹³ or provide for the examination and licensing of plumbers.¹⁴ The fact that such statutes are applicable in terms to persons who had previously enjoyed the right to pursue their avocations does not render them objectionable.¹⁵

In the absence of a constitutional provision conferring the elective franchise it is a privilege to be granted as the legislature may deem proper, and it may be withheld from persons who have been guilty of crime without violating this clause,¹⁶ and the fitness of persons claiming the right to vote may be tested by requiring them to take an oath.¹⁷ Where, however, the right has been conferred by constitutional provision the legislature cannot require a voter to take any oath not prescribed in the constitution.¹⁸

A provision in a state constitution that no person shall be prosecuted civilly for acts done under military authority during the Civil War is not a bill of attainder.¹⁹

¹¹ *Dent v. West Virginia*, 129 U. S. 125, 9 S. Ct. 234, 32 L. ed. 623; *Brooks v. State*, 88 Ala. 124, 6 South. 903; *State v. Webster*, 150 Ind. 616, 50 N. E. 753, 41 L. R. A. 212; *State v. Randolph*, 23 Or. 82, 37 Am. St. Rep. 658, 31 Pac. 202, 17 L. R. A. 470.

¹² *State v. Heinemann*, 80 Wis. 257, 27 Am. St. Rep. 36, 49 N. W. 819.

¹³ *Howker v. New York*, 170 U. S. 198, 18 S. Ct. 577, 42 L. ed. 1002, affirming 152 N. Y. 242, 46 N. E. 609.

¹⁴ *State v. Gardner*, 58 Ohio St. 609, 65 Am. St. Rep. 790, 51 N. E. 138, 41 L. R. A. 689.

¹⁵ *Dent v. West Virginia*, 129 U. S. 126, 9 S. Ct. 235, 32 L. ed. 623.

¹⁶ *Murphy v. Ramsey*, 114 U. S. 42, 5 S. Ct. 747, 29 L. ed. 47; *Shepherd v. Grimmett*, 3 Idaho, 403, 31 Pac. 793; *Washington v. State*, 75 Ala. 582, 51 Am. Rep. 479.

¹⁷ *Shepherd v. Grimmett*, 3 Idaho, 403, 31 Pac. 793; *Wooley v. Watkins*, 2 Idaho, 590, 22 Pac. 102; *Blair v. Ridgley*, 41 Mo. 63, 37 Am. Dec. 248; *Anderson v. Baker*, 23 Md. 531; *State v. Neal*, 42 Mo. 119; *Randolph v. Good*, 3 W. Va. 541.

¹⁸ *Green v. Shumway*, 39 N. Y. 418.

¹⁹ *Drehman v. Stifle*, 8 Wall. 601, 6 L. ed. 508, affirming, 41 Mo. 184, 97 Am. Dec. 248; *Clark v. Dick*, 1 Dill. 8, Fed. Cas. No. 2818; *Smith v. Owen*, 42 Mo. 508; *State v. Gatzweiler*, 49 Mo. 18, 8 Am.

Ex Post Facto Laws.*

An *ex post facto* law is a law enacted after an offense is committed and which, in relation to it or its consequences, alters the situation of the accused to his disadvantage.²⁰ The term embraces every law that makes an act done before the passage of the law, and innocent when done, criminal;²¹ every law that aggravates a crime or changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;²² every law that alters the legal rules of evidence, and authorizes conviction upon less or different testimony than was required by law at the time an offense was committed.²³

The prohibition embraces not only laws punishing an act which was innocent when committed, but also laws punishing for criminal acts as to which there was no liability to punishment at the time of their passage; e. g., extending the time for the prosecution of offenses and attempting to revive liability to prosecution already barred.²⁴ Where, however, the immunity

Rep. 119; *Hess v. Johnson*, 3 W. Va. 645; *Peerce v. Kitzmiller*, 19 W. Va. 573.

²⁰ *Kring v. Missouri*, 107 U. S. 235, 2 S. Ct. 449, 27 L. ed. 506; *Thompson v. Utah*, 170 U. S. 351, 18 S. Ct. 620, 42 L. ed. 1061.

²¹ *Calder v. Bull*, 3 Dall. 390-393, 1 L. ed. 648; *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876; *Ex parte Garland*, 4 Wall. 366, 18 L. ed. 366; *Burgess v. Salmon*, 97 U. S. 382, 24 L. ed. 1104; *In re Dorsey*, 5 R. I. 190; *Lindzey v. State*, 65 Miss. 543, 5 South. 99, 7 Am. St. Rep. 675.

²² *Calder v. Bull*, 3 Dall. 390-393, 1 L. ed. 648; *Fletcher v. Peck*, 6 Cr. 138, 3 L. ed. 162; *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876; *Cummings v. Missouri*, 4 Wall. 330, 18 L. ed. 356; *Medley*, Petitioner, 134 U. S. 171, 10 S. Ct. 384, 33 L. ed. 835; *Hartnung v. People*, 22 N. Y. 106; *Shepherd v. People*, 25 N. Y. 406; *Ratzky v. People*, 29 N. Y. 124; *Beard v. State*, 74 Md. 132, 21 Atl. 701; *State v. McDonald*, 20 Minn. 136; *In re Petty*, 22 Kan. 477.

²³ *Calder v. Bull*, 3 Dall. 397, 1 L. ed. 648; *Cummings v. Missouri*, 4 Wall. 331, 18 L. ed. 356; *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 485; *Kring v. Missouri*, 107 U. S. 235, 2 S. Ct. 449, 27 L. ed. 506; *Hart v. State*, 40 Ala. 22, 88 Am. Dec. 756; *State v. Bond*, 4 Jones (N. C.), 10; *State v. Johnson*, 12 Minn. 484, 93 Am. Dec. 247. And see *United States v. Hughes*, 8 Ben. 30, Fed. Cas. No. 15,416.

²⁴ *Moore v. State*, 43 N. J. L. 203, 39 Am. Rep. 558; *People v. Lord*, 12 Hun. 282; *State v. Keith*, 63 N. C. 140; *State v. Sneed*, 25 Tex. Supp. 66.

* For prohibition applicable to Congress, see art. I, § 9, cl. 3.

arises from the protection afforded by the laws of another jurisdiction, an extradition treaty providing for the surrender of a fugitive cannot be deemed *ex post facto*.²⁵ Amendatory statutes merely changing the designation of a crime punishable when committed are not open to objection;²⁶ but where a statute defining and punishing an offense has been repealed, it would seem that the repeal of the repealing statute would be *ex post facto* as to an offense committed while the original statute was in force.²⁷ A statute taking away the power of the jury to determine the degree of punishment for murder, and fixing the penalty for murder in the first degree at death cannot retroact.²⁸

Punishment has been defined as the penalty imposed for a transgression of the law,²⁹ and every law that inflicts a greater penalty than the law annexed to the crime when committed is *ex post facto*.³⁰ A slight change in the punishment will render the law objectionable unless it is manifest that the punishment prescribed is not greater than under the previous law;³¹ it is sufficient to show that it might be so although that is not its necessary effect.³² Nor is the extent to which the punishment is increased of any moment in determining the *ex post facto* character of a law.³³ So a law providing for solitary confine-

²⁵ *In re De Giacomo*, 12 Blatchf. 401, Fed. Cas. No. 3747.

²⁶ *State v. Baldwin*, 45 Conn. 134; *Sage v. State*, 127 Ind. 15, 26 N. E. 667; *Commonwealth v. Sullivan*, 150 Mass. 315, 23 N. E. 47; *Randolph v. Larned*, 27 N. J. Eq. 557; *Powers v. Shepard*, 48 N. Y. 540.

²⁷ *State v. Keith*, 63 N. C. 140; *Hartnug v. People*, 22 N. Y. 95. *Contra*, *Commonwealth v. Getchell*, 16 Pick. 452; *Commonwealth v. Mott*, 21 Pick. 492.

²⁸ *Marion v. State*, 16 Neb. 349, 20 N. W. 289.

²⁹ *Miller, J.*, in *Ex parte Garland*, 4 Wall. 398, 18 L. ed. 366.

³⁰ *Calder v. Bull*, 3 Dall. 390-393, 1 L. ed. 648.

³¹ *Hartnug v. People*, 22 N. Y. 106; *Ratzky v. People*, 29 N. Y. 104.

³² *Beard v. State*, 74 Md. 132, 21 Atl. 701; *Lindzey v. State*, 65 Miss. 545, 7 Am. St. Rep. 676, 5 South. 100.

³³ *Cummings v. Missouri*, 4 Wall. 277, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 333, 18 L. ed. 366; *In re Medley*, 134 U. S. 166, 10 S. Ct. 384, 33 L. ed. 835.

ment until the execution of a death sentence is void as to prior offenses;³⁴ as also is a law changing a penalty from hanging to hard labor until such time as the governor should fix the date of execution;³⁵ a law withdrawing deductions from a term of imprisonment for good behavior;³⁶ a law making what was formerly a misdemeanor a felony;³⁷ a law increasing costs on conviction.^{37a}

A statute imposing a heavier punishment upon one previously convicted of a felony does not impose an additional imprisonment for former crimes, and so is not *ex post facto*;³⁸ such a statute merely provides a rule for judging the severity of the sentence which should be imposed,³⁹ and the increased penalty is intended as a punishment for persistence in crime.⁴⁰

Where the law in force at the time an offense is committed provides for imprisonment at hard labor, a law authorizing the leasing of convicts does not increase punishment,⁴¹ and a law aiming at the improvement of prison discipline is not objectionable although it may impose burdens upon those under sen-

³⁴ *In re Medley*, 134 U. S. 171, 10 S. Ct. 384, 33 L. ed. 835. But see *In re Tyson*, 13 Colo. 484, 22 Pac. 810, 6 L. R. A. 472.

³⁵ *In re Petty*, 22 Kan. 477.

³⁶ *Murphy v. Commonwealth*, 172 Mass. 269, 70 Am. St. Rep. 271, 52 N. E. 507, 43 L. R. A. 154.

³⁷ *State v. Smith*, 62 Minn. 542, 64 N. W. 1022.

^{37a} *Caldwell v. State*, 55 Ala. 133.

³⁸ *Moore v. Missouri*, 159 U. S. 677, 16 S. Ct. 179, 40 L. ed. 301; *McDonald v. Massachusetts*, 180 U. S. 313, 21 S. Ct. 389, 45 L. ed. 542; *Ex parte Gutierrez*, 45 Cal. 430; *Ross' Case*, 2 Pick. 165.

³⁹ *McDonald v. Massachusetts*, 180 U. S. 313, 21 S. Ct. 389, 45 L. ed. 542; *Commonwealth v. Murphy*, 174 Mass. 374, 75 Am. St. Rep. 357, 54 N. E. 862, 48 L. R. A. 393; *People v. Stanley*, 47 Cal. 113, 17 Am. Rep. 401; *McGuire v. State*, 47 Md. 465; *Kelly v. People*, 115 Ill. 583, 56 Am. Rep. 184, 4 N. E. 644.

⁴⁰ *McDonald v. Massachusetts*, 180 U. S. 313, 21 S. Ct. 389, 45 L. ed. 542; *People v. Raymond*, 96 N. Y. 38; *State v. Wilbor*, 1 R. I. 199, 36 Am. Dec. 245; *Commonwealth v. Graves*, 155 Mass. 163, 29 N. E. 579, 16 L. R. A. 256; *Ingalls v. State*, 48 Wis. 647, 4 N. W. 785; *Band v. Commonwealth*, 9 Gratt. 738.

⁴¹ *Mason etc. Co. v. Main Jellico etc. Co.*, 87 Ky. 467, 9 S. W. 391; *State v. McCauley*, 15 Cal. 456.

tence.⁴² Regulations as to the hour and place of execution and as to the height of the inclosure and the number of persons present do not increase the punishment.⁴³

Laws mitigating the punishment prescribed by previous laws are not repugnant to this clause;⁴⁴ e. g., a law changing a penalty from death to life imprisonment,⁴⁵ changing penalty from whipping and imprisonment in the common jail to imprisonment in the penitentiary,⁴⁶ repealing a provision fixing the minimum penalty,⁴⁷ decreasing the maximum penalty.⁴⁸ The mitigation, however, must consist in the remission of some separable part of the penalty; if one penalty is merely substituted for another, the courts will refuse to apply either.⁴⁹

A statute changing the rules of evidence and receiving less or different evidence than the previous statute required to convict, is *ex post facto*.⁵⁰ So the repeal of a law which makes a conviction for a lesser degree of homicide conclusive of innocence of the greater is void as to a prior offense.⁵¹ This is true of a statute requiring only the testimony of an accomplice to convict where the previous law required corroborative evi-

⁴² *Hartnung v. People*, 22 N. Y. 95, 105; *Lindzey v. State*, 65 Miss. 545, 7 Am. St. Rep. 676, 5 South. 100; *In re Miller*, 110 Mich. 677, 64 Am. St. Rep. 377, 68 N. W. 990, 34 L. R. A. 398.

⁴³ *Holden v. Minnesota*, 137 U. S. 491, 11 S. Ct. 143, 34 L. ed. 734.

⁴⁴ *Calder v. Bull*, 3 Dall. 391, 1 L. ed. 648; *Lynn v. State*, 84 Md. 78, 35 Atl. 22; *People v. Hayes*, 140 N. Y. 491, 37 Am. St. Rep. 576, 35 N. E. 952, 23 L. R. A. 830; *Commonwealth v. Wyman*, 12 Cush. 239. And see *Turner v. State*, 40 Ala. 21, 29; *Moore v. State*, 40 Ala. 49; *Strong v. State*, 1 Blackf. 193.

⁴⁵ *Commonwealth v. Gardner*, 11 Gray, 438. But see *Shepherd v. People*, 25 N. Y. 415.

⁴⁶ *State v. Kent*, 65 N. C. 312; *State v. Batts*, 63 N. C. 503.

⁴⁷ *People v. Hayes*, 140 N. Y. 491, 37 Am. St. Rep. 576, 35 N. E. 952, 23 L. R. A. 830.

⁴⁸ *Lynn v. State*, 84 Md. 78, 35 Atl. 22.

⁴⁹ *Lindzey v. State*, 65 Miss. 545, 7 Am. St. Rep. 674, 5 South. 100.

⁵⁰ *Calder v. Bull*, 3 Dall. 391; *Cummings v. Missouri*, 4 Wall. 329, 1 L. ed. 648; *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 485; *Gilbson v. Mississippi*, 162 U. S. 590, 16 S. Ct. 904, 40 L. ed. 1075. But see *Moore v. State*, 14 Vroom, 203, 39 Am. Rep. 569, questioning this phase of the rule.

⁵¹ *Kring v. Missouri*, 107 U. S. 228, 2 S. Ct. 449, 27 L. ed. 508.

dence,⁵² a statute permitting conviction upon circumstantial evidence where, before, direct evidence was required,⁵³ or a statute declaring that the criminal act of an agent is presumed to be the act of his principal.⁵⁴ But a statute merely enlarging the class of persons competent to testify is not objectionable.⁵⁵

— **Restriction of Phrase to Penal Laws.**

Ex post facto laws within the prohibition of this clause include only criminal laws, and not retrospective laws, civil in their nature;⁵⁶ but while the provision is aimed against criminal laws, it cannot be evaded by giving civil form to that which is substantially criminal,⁵⁷ and the law to be ex post facto need not involve the question of personal liberty; the imposition of any penalty or forfeiture cannot be retroactive.⁵⁸

The so-called test-oath acts excluding persons guilty of past acts of rebellion from the practice of their professions inflict a

⁵² *Hart v. State*, 40 Ala. 22 88 Am. Dec. 756.

⁵³ *State v. Johnson*, 12 Minn. 484, 93 Am. Dec. 247.

⁵⁴ *State v. Bond*, 4 Jones (N. C.), 10.

⁵⁵ *Mrons v. State*, 36 Tex. Cr. Rep. 597, 37 Am. St. Rep. 834.

⁵⁶ *Calder v. Bull*, 3 Dall. 390, 1 L. ed. 648; *Ogden v. Saunders*, 12 Wheat. 266, 6 L. ed. 606; *Baltimore etc. R. R. v. Nesbit*, 10 How. 402, 13 L. ed. 469; *Carpenter v. Commonwealth*, 17 How. 463, 15 L. ed. 127; *Locke v. New Orleans*, 4 Wall. 173, 18 L. ed. 334; *Ex parte Garland*, 4 Wall. 390, 16 L. ed. 366; *In re Sawyer*, 124 U. S. 219, 8 S. Ct. 492, 31 L. ed. 402; *Albee v. May*, 2 Paine, 74, Fed. Cas. No. 134; *United States v. Gibert*, 2 Sum. 101, Fed. Cas. No. 15,204; *Holman v. Bank*, 12 Ala. 417; *Aldridge v. Tusculumbia etc. R. R.*, 2 Stew. & P. 199, 23 Am. Dec. 312; *Boston v. Cummins*, 16 Ga. 107, 60 Am. Dec. 720; *Coles v. Madison County*, Breese, 156, 12 Am. Dec. 163; *Danville v. Pace*, 25 Gratt. 1, 18 Am. Rep. 669; *Gladney v. Sydnor*, 172 Mo. 318, 35 Am. St. Rep. 517, 72 S. W. 554, 60 L. R. A. 830; *Burch v. Newbury*, 10 N. Y. 374; *People v. Howker*, 159 N. Y. 234, 46 N. E. 608; *Foster v. Police Commissioners*, 102 Cal. 483, 41 Am. St. Rep. 194, 37 Pac. 763; *Bridgeport v. Hubbell*, 5 Conn. 240; *Elliott v. Mayfield*, 4 Ala. 417; *Wilder v. Lumpkin*, 4 Ga. 209.

⁵⁷ *Cummings v. Missouri*, 4 Wall. 328, 18 L. ed. 356; *Burgess v. Salmon*, 97 U. S. 385, 27 L. ed. 359; *Howker v. New York*, 170 U. S. 196, 18 S. Ct. 573, 42 L. ed. 1002.

⁵⁸ *Locke v. New Orleans*, 4 Wall. 173, 18 L. ed. 334; *United States v. Hughes*, 8 Ben. 29, Fed. Cas. No. 15,416.

penalty for past acts and are equally as repugnant to this clause as acts imposing a penalty of death or imprisonment.⁵⁹ So also as to a law precluding suitors who could not take a prescribed oath from petitioning for a rehearing previously allowed them.⁶⁰ A statute partaking of both a criminal and a civil nature may, however, retroact in its civil aspect; as a statute taxing purchases for the previous year and imposing a penalty for failure to make returns,⁶¹ or a statute prohibiting sales of liquor operating necessarily to prevent sales of liquor previously manufactured.⁶²

Statutes prescribing the causes for which divorce may be granted do not necessarily punish a crime or an immoral act, and such causes may be applied to secure the dissolution of marriages already contracted,⁶³ and this is true of a law authorizing the judge granting a divorce to forbid the guilty party to marry during the other's lifetime;⁶⁴ but a law authorizing the granting of a divorce for adultery, an offense previously punishable only by fine, has been held *ex post facto* as to previous offenses.⁶⁵

In the absence of a constitutional provision prescribing the qualifications of electors, the franchise may be conferred as the legislature deems proper;⁶⁶ the withholding of the franchise from persons guilty of crime cannot be deemed the infliction of

⁵⁹ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356; *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366; *Murphy and Glover Cases*, 41 Mo. 370; *State v. Bermoudy*, 36 Mo. 279; *State v. McAdoo*, 36 Mo. 452; *State v. Adams*, 44 Mo. 570.

⁶⁰ *Pierce v. Carskadon*, 16 Wall. 239, reversing 4 W. Va. 248, 6 Am. Rep. 292.

⁶¹ *State v. Bell*, Phill. (N. C.) 81.

⁶² *State v. Paul*, 5 R. I. 190.

⁶³ *Elliott v. Elliott*, 38 Md. 362; *Jones v. Jones*, 2 Over. 2; *Carson v. Carson*, 40 Miss. 349; *Hickman v. Hickman*, 1 Wash. 257, 24 Pac. 445, 22 Am. St. Rep. 148.

⁶⁴ *Elliott v. Elliott*, 38 Md. 362.

⁶⁵ *Dickinson v. Dickinson*, 3 Murph. (N. C.) 330, 9 Am. Dec. 609.

⁶⁶ *Murphy v. Ramsey*, 114 U. S. 43, 5 S. Ct. 747, 29 L. ed. 47; *Shepherd v. Grimmer*, 3 Idaho, 403, 31 Pac. 795; *Anderson v. Baker*, 23 Md. 605; *Blair v. Ridgley*, 41 Mo. 171, 97 Am. Dec. 252. But see *Green v. Shumway*, 39 N. Y. 424.

a punishment prohibited by this clause,⁶⁷ and persons claiming the right to vote may be required to take an expurgatory oath.⁶⁸

An act disqualifying, as jurors, persons previously convicted of crimes does not punish anew the offenses of such persons, and is not *ex post facto*.⁶⁹

It is within the police powers of a state to require that practitioners of medicine shall be of good moral character, and the exclusion of ex-convicts from the right to practice is not objectionable as applied to one punished before its passage.⁷⁰ A law requiring the registration of medical practitioners is not objectionable because it applies to physicians already licensed.⁷¹

A law repealing a prior law before the performance of acts necessary to give vested rights is not *ex post facto*,⁷² nor is a law prescribing the conditions under which, alone, a thing may be used in future,⁷³ nor a law regulating escheats, without reference to crimes, pains or penalties.⁷⁴

— Laws Relating to Criminal Procedure.

In applying the prohibition as to *ex post facto* laws, a distinction is to be drawn between statutes objectionable as altering rules of evidence and those relating to matters of procedure.⁷⁵ So long as a change of procedure deprives an accused person of no substantial rights, so as to "alter his situation to

⁶⁷ *Murphy v. Ramsey*, 114 U. S. 42, 43, 5 S. Ct. 747, 29 L. ed. 47; *Washington v. State*, 75 Ala. 582, 51 Am. Rep. 479.

⁶⁸ *Davis v. Beason*, 133 U. S. 345-347, 10 S. Ct. 299, 33 L. ed. 637; *Shepherd v. Grimmer*, 3 Idaho, 403, 31 Pac. 795; *Woolley v. Watkins*, 2 Idaho. 590, 22 Pac. 102.

⁶⁹ *Garrett v. Weinberg*, 54 S. C. 144, 31 S. E. 345.

⁷⁰ *Howker v. New York*, 170 U. S. 191, 18 S. Ct. 578, 42 L. ed. 1002, affirming 152 N. Y. 240, 56 N. E. 608.

⁷¹ *Reetz v. Michigan*, 188 U. S. 505, 23 S. Ct. 390, 47 L. ed. 563.

⁷² *Van Horne v. Dorrance*, 2 Dall. 304, Fed. Cas. No. 16,857.

⁷³ *Evans v. Jordan*, 9 Cr. 199, 3 L. ed. 704; *Evans v. Weiss*, 2 Wash. C. C. 342, Fed. Cas. No. 4572.

⁷⁴ *White v. Wayne*, Charl. 194.

⁷⁵ *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 435; *Thompson v. Utah*, 170 U. S. 352, 18 S. Ct. 620, 42 L. ed. 1061; *Moore v. State*, 43 N. J. L. 214, 39 Am. Rep. 568; *State v. Bond*, 4 Jones, 10; *Mrous v. State*, 31 Tex. Cr. Rep. 509, 37 Am. St. Rep.

his disadvantage," it is unobjectionable. Changes in rules regulating the admission of testimony do not always contravene this provision; e. g., statutes enlarging the class of persons competent to testify,⁷⁶ or admitting evidence of a particular kind to prove an issue of fact.⁷⁷ Such statutes do not alter the degree or lessen the amount of proof necessary to conviction of a crime at the time it was committed.⁷⁸

An accused person has no vested right to be tried in the exact mode, in all respects, as was prescribed by law at the time the offense charged against him was committed.⁷⁹ So a law changing the place of trial passed after the commission of an offense is not *ex post facto*,⁸⁰ nor is a law merely changing the structure of the courts,⁸¹ increasing the number of trial judges within a certain jurisdiction,⁸² transferring jurisdiction from one court to another,⁸³ creating new courts or conferring new jurisdiction,⁸⁴ dispensing with preliminary examinations before

835, 21 S. W. 764; *Walston v. Commonwealth*, 16 B. Mon. 37; *People ex rel. v. McDonald*, 5 Wyo. 533, 42 Pac. 17, 29 L. R. A. 834; *State v. Hoyt*, 47 Conn. 532.

76 *Hopt v. Utah*, 110 U. S. 589, 4 S. Ct. 202, 28 L. ed. 262; *Mrons v. State*, 31 Tex. Cr. Rep. 599, 37 Am. St. Rep. 835, 21 S. W. 764; *Laughlin v. Commonwealth*, 13 Bush, 261. And see *Commonwealth v. Homer*, 153 Mass. 343, 26 N. E. 872.

77 *Thompson v. Missouri*, 171 U. S. 387, 18 S. Ct. 922, 43 L. ed. 204, affirming 141 Mo. 417, 42 S. W. 951.

78 *Hopt v. Utah*, 110 U. S. 589, 4 S. Ct. 202, 28 L. ed. 262; *Robinson v. State*, 84 Ind. 452.

79 *Thompson v. Utah*, 170 U. S. 351, 42 L. ed. 1061; *Thompson v. Missouri*, 171 U. S. 388, 18 S. Ct. 922, 43 L. ed. 204.

80 *Gut v. State*, 9 Wall. 37, 38, 19 L. ed. 573; *Cook v. United States*, 138 U. S. 183, 11 S. Ct. 268, 34 L. ed. 906.

81 *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 485; *Moore v. Missouri*, 159 U. S. 679, 16 S. Ct. 182, 40 L. ed. 301.

82 *State v. Thompson*, 141 Mo. 417, 42 S. W. 951.

83 *State v. Welch*, 65 Vt. 54, 25 Atl. 901; *State v. Cooler*, 30 S. C. 105, 8 S. E. 692, 3 L. R. A. 181.

84 *Anderson v. O'Donnell*, 29 S. C. 355, 13 Am. St. Rep. 728, 7 S. E. 523, 1 L. R. A. 632; *State v. Sullivan*, 14 Rich. 281; *Commonwealth v. Phillippa*, 11 Pick. 28.

police magistrates;⁸⁵ nor is a law repealing a law entitling an accused to a change of venue upon showing certain facts.⁸⁶

Laws changing the mode of charging a crime relate solely to procedure, and a change may authorize a charge by either indictment or information,⁸⁷ or prescribe information in place of indictment.⁸⁸ So also a law validating defective indictments,⁸⁹ or allowing amendments thereto,⁹⁰ or authorizing the correction of clerical errors in sentences,⁹¹ are valid as to prior offenses.

A statute regulating the selection of grand and petit juries, and prescribing their qualifications, may retroact;⁹² as also a statute changing the mode of summoning juries,⁹³ or allowing the state a certain number of peremptory challenges,⁹⁴ or reducing the number of peremptory challenges,⁹⁵ or making the jury judges of the facts alone, instead of the law and the facts.⁹⁶ The number of grand jurors necessary to find an indictment may be reduced;⁹⁷ but a law providing for the trial of persons ac-

⁸⁵ *In re Wright*, 3 Wyo. 481, 31 Am. St. Rep. 97, 27 Pac. 566, 13 L. R. A. 748.

⁸⁶ *People ex rel. v. McDonald*, 5 Wyo. 533, 42 Pac. 17, 29 L. R. A. 834. But see *People v. Powell*, 87 Cal. 359, 25 Pac. 484, 11 L. R. A. 75.

⁸⁷ *People v. Campbell*, 59 Cal. 243, 43 Am. Rep. 257; *Sage v. State*, 127 Ind. 19, 26 N. E. 669; *In re Wright*, 3 Wyo. 481, 31 Am. St. Rep. 97, 27 Pac. 566, 13 L. R. A. 748.

⁸⁸ *Lybarger v. State*, 2 Wash. 557, 27 Pac. 450.

⁸⁹ *State v. Sears*, Phill. (N. C.) 146; *Commonwealth v. Bean*. Thach. C. C. 85.

⁹⁰ *State v. Manning*, 14 Tex. 402.

⁹¹ *Ex parte Bethurum*, 66 Mo. 545.

⁹² *Gibson v. Mississippi*, 162 U. S. 589, 16 S. Ct. 904, 40 L. ed. 1075.

⁹³ *Perry v. Commonwealth*, 3 Gratt. 632.

⁹⁴ *Walston v. Commonwealth*, 16 B. Mon. 15; *State v. Ryan*, 13 Minn. 370; *Warren v. Commonwealth*, 87 Pa. St. 45; *Walter v. People*, 32 N. Y. 147; *Commonwealth v. Dorsey*, 103 Mass. 412; *Jones v. State*, 1 Ga. 610.

⁹⁵ *Reynolds v. State*, 1 Ga. 222; *Perry v. Commonwealth*, 3 Gratt. 632.

⁹⁶ *Marion v. State*, 20 Neb. 233, 57 Am. Rep. 825, 29 N. W. 911.

⁹⁷ *State v. Ah Jim*, 9 Mont. 167, 23 Pac. 76.

cused of felony by a jury of eight persons is void as to a previous offense,⁹⁸ as also is a statute depriving the accused of the right to object to an incompetent grand juror,⁹⁹ and a statute authorizing the jury to fix the penalty upon conviction.¹⁰⁰ Other examples of laws relating to procedure only, and so not ex post facto, are: statutes requiring the defense of insanity to be specially pleaded;¹⁰¹ allowing counsel for the prosecution to close as well as to open the argument to the jury;¹⁰² giving to the state the right to appeal from orders granting new trials;¹⁰³ allowing the time and place of execution, and prescribing the number of persons who may witness it.¹⁰⁴

⁹⁸ *Thompson v. Utah*, 170 U. S. 350, 18 S. Ct. 620, 42 L. ed. 1061.

⁹⁹ *Martin v. State*, 22 Tex. 214.

¹⁰⁰ *Holt v. State*, 2 Tex. 363, and see *Dawson v. State*, 6 Tex. 347.

¹⁰¹ *Perry v. State*, 87 Ala. 30.

¹⁰² *People v. Mortimer*, 46 Cal. 114.

¹⁰³ *Mallett v. North Carolina*, 181 U. S. 597, 21 S. Ct. 730, 45 L. ed. 1015.

¹⁰⁴ *Holden v. Minnesota*, 137 U. S. 491, 11 S. Ct. 143, 34 L. ed. 734.

Or law impairing the obligation of contracts.

Scope of the "Obligation Clause"—In General.

The prohibition against the passage of laws impairing the obligation of contracts is confined to the states;¹ but it cannot be nullified by any congressional act purporting by authorization or ratification to give effect to a state law or constitution in conflict with the constitution of the United States.² One of the great objects of the constitution was to preserve the inviolability of contracts,³ and to secure the observance of good faith in the stipulations of the parties to a contract.⁴ But the purpose was to protect rights and not mere incidental advantages derived indirectly from contracts.⁵

The prohibition goes to the power of the state, and not to the manner or character of its action,⁶ and the body upon which it rests is the legislative department of the state.⁷ The states having been forbidden absolutely to pass laws impairing the obligation of contracts,⁸ a law having that effect is null and

¹ *Satterlee v. Matthewson*, 2 Pet. 416, 7 L. ed. 458; *In re Klein*, 1 How. 277; *Legal Tender Cases*, 12 Wall. 550, 20 L. ed. 287; *White v. Hart*, 13 Wall. 646, 20 L. ed. 685; *Walker v. Whitehead*, 16 Wall. 318, 21 L. ed. 357; *Home Ins. Co. v. City Council*, 93 U. S. 121, 23 L. ed. 825; *Evans-Snider-Buel Co. v. McFadden*, 105 Fed. 293, 58 L. R. A. 900; *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559; *Evans v. Eaton*, 1 Pet. C. C. 337, Fed. Cas. No. 4559; *Gunn v. Barry*, 8 Bank. Reg. 1; *In re Smith*, 2 Woods, 460, Fed. Cas. No. 12,996; *Kunzler v. Kohaus*, 5 Hill, 325; *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400; *Mayer v. Knight*, 27 Tex. 719. See *Hepburn v. Griswold*, 8 Wall. 623, 19 L. ed. 513, where it was declared that an act of Congress operating directly to impair contract obligations would be inconsistent with the spirit of the constitution.

² *White v. Hart*, 13 Wall. 646, 20 L. ed. 685, 39 Ga. 306; *Gunn v. Barry*, 8 Bank. Reg. 1; *In re Kennedy*, 2 Rich., N. S., 216; *Calhoun v. Calhoun*, 2 Rich., N. S., 283.

³ *Murray v. Charleston*, 96 U. S. 449, 24 L. ed. 760.

⁴ *Garrison v. New York*, 21 Wall. 203, 22 L. ed. 612.

⁵ *Ochiltree v. Railroad*, 21 Wall. 253, 22 L. ed. 546.

⁶ *Jacoway v. Denton*, 25 Ark. 625.

⁷ *Trustees v. Rider*, 13 Conn. 87.

⁸ *Hanover Nat. Bank v. Moyses*, 186 U. S. 138, 22 S. Ct. 857, 46 L. ed. 1113.

void, and the courts in enforcing the contracts affected by the law will apply the same remedies as though the invalid law had never been passed.⁹

— Vested Rights.*

A state law divesting vested rights violates no constitutional provision where it does not impair the obligation of a contract;¹⁰ it is only when legislation acts upon contracts as distinct from vested rights that the prohibition against impairing the obligation of contracts is infringed.¹¹ Accordingly property acquired under a contract may be taken for public use without violating the prohibition,¹² and the taking of a contract under condemnation proceedings does not break its obligations, but appropriates it, as it does tangible property, to public uses.¹³

A vested right is the power to do certain actions or possess certain things according to the law of the land,¹⁴ and rights vested under a law, which is in its nature a contract, cannot be divested by the legislature.¹⁵ A right is vested when it has already become a legal or equitable title,¹⁶ and the legislature has no power to divest titles,¹⁷ or legal or equitable rights previously vested,¹⁸ or to vest them in another.¹⁹ If a vested right

⁹ *Louisiana v. Pillsbury*, 105 U. S. 302, 26 L. ed. 1090.

¹⁰ *Satterlee v. Matthewson*, 2 Pet. 413, 7 L. ed. 458; *Baltimore etc. R. R. v. Nesbit*, 10 How. 402, 13 L. ed. 469; *De Moss v. Newton*, 31 Ind. 220; *Shepherd v. Grimmett*, 3 Idaho, 403, 31 Pac. 795; *McLure v. Melton*, 24 S. C. 570, 58 Am. Rep. 278.

¹¹ *Charles River Bridge v. Warren Bridge*, 11 Pet. 582, 9 L. ed. 773; *Baltimore etc. R. R. v. Nesbit*, 10 How. 401, 13 L. ed. 469; *Calhoun v. Calhoun*, 2 S. C. 301.

¹² *Green v. Biddle*, 8 Wheat. 89, 5 L. ed. 547.

¹³ *Long Island etc. Co. v. Brooklyn*, 106 U. S. 691, 17 S. Ct. 718, 41 L. ed. 1165.

¹⁴ *Calder v. Bull*, 3 Dall. 304, 1 L. ed. 648.

¹⁵ *Fletcher v. Peck*, 6 Cr. 135, 3 L. ed. 162.

¹⁶ *Richardson v. Akin*, 87 Ill. 136.

¹⁷ *Helm v. Webster*, 85 Ill. 116.

¹⁸ *Bunn v. Morrison*, 5 Ark. 217; *Grisoom v. Hill*, 17 Ark. 489.

¹⁹ *Koenig v. Omaha etc. R. R. Co.*, 3 Neb. 383.

*See, also, post, pp. 273-276.

acquired under contract be impaired by a subsequent statute the statute is void;²⁰ but the repeal of an act before a party has taken all the steps requisite to give him a right under it does not impair the obligation of a contract.²¹ So a railroad's right to condemn land, unexecuted except by filing a general map of the proposed route, is not so vested as to make condemnation by the state repugnant to this clause.²²

While a legislative act ought not to be given a retroactive effect unless the intention that it so operate is clear,²³ yet retroactive laws which do not impair the obligation of contracts and are not *ex post facto* are valid.²⁴ So a statute is not objectionable because it purports to operate upon contingent or conditional rights,²⁵ and a mere expectation of property in the future may be changed, modified or abolished by legislative action;²⁶ only rights actually vested and to which the title is complete are protected.²⁷

If an act is within the legislative power it is not a valid ob-

²⁰ *Bronson v. Kinzie*, 1 How. 315, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 612, 11 L. ed. 397; *Von Hoffman v. Quincy*, 4 Wall. 549, 18 L. ed. 403; *State v. Bridges*, 22 Wash. 64, 79 Am. St. Rep. 914, 60 Pac. 60.

²¹ *Van Horne v. Dorrance*, 2 Dall. 304, Fed. Cas. No. 16,857; *Mobile R. R. Co. v. State*, 29 Ala. 573; *Brinsfield v. Carter*, 2 Ga. 143; *Wise v. Rogers*, 24 Gratt. 169; *Huntsman v. Randolph*, 5 Hayw. 263; *State v. Gray*, 4 Wis. 380.

²² *Adirondack Ry. v. New York*, 176 U. S. 350, 20 S. Ct. 460, 44 L. ed. 492.

²³ *United States v. Arredondo*, 6 Pet. 733, 3 L. ed. 547; *Farrell v. Pingree*, 5 Utah, 449, 16 Pac. 845; *Dash v. Van Kleeck*, 7 Johns. 477, 5 Am. Dec. 291.

²⁴ *Drehman v. Stifle*, 8 Wall. 603, 19 L. ed. 508; *Blount v. Windley*, 95 U. S. 180, 24 L. ed. 424; *New Orleans v. Pontz*, 14 La. Ann. 853; *New Orleans v. Cordiviale*, 13 La. Ann. 260; *Bay v. Gage*, 36 Barb. 447; *Hinton v. Hinton*, Phill. (N. C.) 410; *Tilton v. Swift*, 40 Iowa, 78; *Lane v. Nelson*, 79 Pa. St. 407.

²⁵ *Clarke v. McCreary*, 40 Miss. 347.

²⁶ *Butterfield v. Sawyer*, 187 Ill. 598, 79 Am. St. Rep. 246, 58 N. E. 602, 52 L. R. A. 75.

²⁷ *Society, etc. v. Wheeler*, 2 Gall. 139, Fed. Cas. No. 13,156; *Nelson v. Allen*, 1 Yerg. 360; *Officer v. Young*, 5 Yerg. 320, 26 Am. Dec. 268.

jection to it that it operates to divest vested rights; such an act is not within the constitutional prohibition, however repugnant it may be to the principles of sound legislation.²⁸

— Statutory Rights.*

Rights growing out of statutory provisions may be modified by statute unless they are in the nature of contracts.²⁹ Marriage is more than a civil contract; it is a relation of society, and the prohibition of this part of the clause does not apply to laws regulating or annulling the relations between parties.³⁰ So the legislature may regulate the granting of divorces.³¹ Dower, while it is a legal right,³² is subject to regulation by statute without infringing the prohibition;³³ but an antenuptial contract is protected and its obligation cannot be impaired by subsequent legislation.³⁴ A statute giving to a husband the

²⁸ *Lane v. Nelson*, 79 Pa. St. 407.

²⁹ *Cohen v. Wright*, 22 Cal. 319; *Oriental Bank v. Freeze*, 18 Me. 109, 36 Am. Dec. 701; *People v. Livingston*, 6 Wend. 526; *Morse v. Rice*, 21 Me. 53.

³⁰ *Maynard v. Hill*, 125 U. S. 214, 8 S. Ct. 723, 31 L. ed. 654, *State v. Tutty*, 41 Fed. 752; *Hunt v. Hunt*, 131 U. S. clxv; *Starr v. Hamilton*, Deady, 268, Fed. Cas. No. 13,314; *Ex parte Kinney*, 3 Hughes, 9, Fed. Cas. No. 7825; *White v. White*, 5 Barb. 474; *Fultz v. Fox*, 9 B. Mon. 499; *Kelly v. McCarthy*, 3 Bradf. 7; *Noel v. Ewing*, 9 Ind. 37; *Jones' Appeal*, 57 Pa. St. 369; *State v. Duket*, 90 Wis. 277, 48 Am. St. Rep. 931, 63 N. W. 85, 31 L. R. A. 515.

³¹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 629; *Barthelmy v. Johnson*, 3 B. Mon. 90, 38 Am. Dec. 179; *Tolen v. Tolen*, 2 Blackf. 407, 21 Am. Dec. 743; *Starr v. Pease*, 8 Conn. 546; *State v. Fry*, 4 Mo. 172; *Campbell's Case*, 2 Bland. Ch. 236, 20 Am. Dec. 377; *Harding v. Alden*, 9 Me. 150, 23 Am. Dec. 555; *Cabell v. Cabell*, 1 Met. (Ky.) 326; *Levins v. Sleator*, 2 G. Greene, 608; *Noel v. Ewing*, 9 Ind. 49; *Cronise v. Cronise*, 54 Pa. St. 262; *Bowen v. Blount*, 48 Ala. 674.

³² *Maybury v. Brien*, 15 Pet. 37, 10 L. ed. 46.

³³ *Starr v. Hamilton*, Deady, 268, Fed. Cas. No. 13,314; *Kelly v. McCarthy*, 3 Bradf. 7; *Noel v. Ewing*, 9 Ind. 37; *In re Barbour*, 46 Me. 9; *Lucas v. Sawyer*, 17 Iowa, 517; *Magee v. Young*, 40 Miss. 164; *Lawrence v. Miller*, 1 Sand. 516.

³⁴ *Desnoyer v. Jordan*, 27 Minn. 295.

*See, also, note as to change of remedy, post, pp. 596 et seq.

right to use his wife's land, with power to rent it for a certain period, and which was in force at the time of marriage has been held to confer contract rights protected by this clause.³⁵

Liens created by law are subject to the control of the legislature and may be altered, modified or abolished.³⁶ So a statute repealing a mechanic's lien law is valid,³⁷ as also is a law creating a lien upon the property of a debtor in favor of an existing contract.³⁸ A law merely altering and enlarging the remedy for the enforcement of mechanics' liens after foreclosure sale does not impair the contracts of the mortgagee or the purchaser;³⁹ nor does a statute extending the time for the enforcement of mechanics' liens.⁴⁰

Statutes providing that a judgment shall constitute a lien upon the judgment debtor's property may apply to existing judgments,⁴¹ and the repeal of a statute giving a judgment creditor a lien has been held unobjectionable.⁴² But, on the other hand, a law giving the right to a judgment lien has been held to form part of the contract.⁴³ A statute requiring a

³⁵ *Rose v. Rose*, 104 Ky. 48, 84 Am. St. Rep. 430, 40 S. W. 524, 41 L. R. A. 353.

³⁶ *Evans v. Montgomery*, 4 Watts. & S. 218; *Patin v. Prejean*, 7 La. 301; *Woodbury v. Grimes*, 1 Colo. 100; *Templeton v. Horne*, 82 Ill. 401; *Wilson v. Simon*, 91 Md. 1, 80 Am. St. Rep. 427, 45 Atl. 1022.

³⁷ *Sullivan v. Brewster*, 1 E. D. Smith, 661; *Miller v. Moore*, 1 E. D. Smith, 739; *Woodbury v. Grimes*, 1 Colo. 100; *Wilson v. Simon*, 91 Md. 1, 80 Am. St. Rep. 427, 45 Atl. 1022.

³⁸ *Gordon v. Canal Co.*, 1 McAll. 513, Fed. Cas. No. 5621; *Brien v. Clay*, 1 E. D. Smith, 649; *Bolton v. Johns*, 5 Pa. St. 145, 47 Am. Dec. 404. But see *Kinney v. Sherman*, 28 Ill. 520.

³⁹ *Red River Valley Bank v. Craig*, 181 U. S. 558, 21 S. Ct. 703, 45 L. ed. 994.

⁴⁰ *Garland v. Irrigation Co.*, 9 Utah, 360, 34 Pac. 370.

⁴¹ *Livingston v. Moore*, 7 Pet. 546-562, 8 L. ed. 751; *Moore v. Letehford*, 35 Tex. 213, 14 Am. Rep. 367.

⁴² *Bank v. Longworth*, 1 McLean, 35, Fed. Cas. No. 923; *Iverson v. Shorter*, 9 Ala. 713; *Beck v. Burnett*, 22 Ala. 822; *Daily v. Burke*, 28 Ala. 328; *Curry v. Landers*, 35 Ala. 280; *Moore v. Holland*, 16 S. C. 24; *McCormick v. Alexander*, 2 Ohio, 285.

⁴³ *Murphy v. Gaskins*, 28 Gratt. 207; *Ratcliffe v. Anderson*, 31 Gratt. 105, 31 Am. Rep. 716; *Gilman v. Tucker*, 128 N. Y. 190, 26 Am.

party to record the abstract of his judgment in order to preserve the lien is valid.⁴⁴ A statute authorizing the sale of property free from encumbrances, and transferring the lien thereof to the proceeds, is valid;⁴⁵ otherwise if the statute permits the sale whether it brings a sufficient amount to pay the encumbrance or not, or allows the proceeds of the property to be first applied to the payment of costs other than those of the sale.⁴⁶

A statute requiring interest to be paid in advance in order to enable the mortgagor to remain in possession is unobjectionable,⁴⁷ as also is a statute giving the grantee of a rent charge the right of re-entry for nonpayment of rent,⁴⁸ and an act taking away the priority of a claim for rent in case of a levy.⁴⁹ A statute depriving a lessee of an action for forcible entry and detainer against a lessor,⁵⁰ or giving an action of covenant against an assignee of a leasehold estate, is likewise valid.⁵¹ A general law requiring the construction of fishways in dams does not, as to a dam previously erected under a special act of the legislature, impair any contract obligations.⁵²

What Constitutes a "Law" Within the Prohibition.

This prohibition applies only to laws which are retrospective in their operation; contracts are not impaired by laws passed prior to their execution, and states are free to legislate as to future contracts,⁵³ and it will not be presumed that the con-

St. Rep. 464, 28 N. E. 1040, 13 L. R. A. 304; *Merchants' Bank v. Ballou*, 98 Va. 112, 81 Am. St. Rep. 715, 32 S. E. 481, 44 L. R. A. 306.

⁴⁴ *Tarpley v. Hamer*, 17 Miss. 310.

⁴⁵ *Potts v. Water Power Co.*, 9 N. J. Eq. 592; *Potts v. New Jersey Arms Co.*, 17 N. J. Eq. 395.

⁴⁶ *Martin v. Somerville*, 3 Wall. Jr. 206, 27 How. Pr. 161, Fed. Cas. No. 9165.

⁴⁷ *Stone v. Bassett*, 4 Minn. 298.

⁴⁸ *Van Rensselaer v. Ball*, 19 N. Y. 100.

⁴⁹ *Stocking v. Hunt*, 3 Denio, 274.

⁵⁰ *Drehman v. Stifle*, 8 Wall. 595, affirming 41 Mo. 184, 97 Am. Dec. 268.

⁵¹ *Taggart v. McGinn*, 14 Pa. St. 155.

⁵² *Parker v. State*, 111 Ill. 581, 53 Am. Rep. 643.

⁵³ *Railroad v. McClure*, 10 Wall. 515, 19 L. ed. 997; *Lehigh Water*

tract alleged to be impaired antedated the statute.⁵⁴ A statute enacted before the constitution went into operation, and impairing the obligation of prior contracts, is not invalid under this clause;⁵⁵ the constitution was made by and for the people of the United States, and its restraints on state powers do not affect laws passed by a state before its admission.⁵⁶ The constitution only prohibits laws impairing the obligation of contracts;⁵⁷ the legislature cannot alter the nature and legal effect of an existing contract or violate its obligation.⁵⁸ A state cannot, by any expression of legislative will or any agency whatever, lessen or impair the legal effect or obligation of any contract valid when entered into;⁵⁹ but it may prohibit the making of certain contracts in the future and declare such contracts to be invalid.⁶⁰

Statutes enacted by the state legislature are not alone within this prohibition; by-laws or ordinances of a municipal corporation having the force of law within the municipality are contemplated by the obligation clause;⁶¹ and a state constitutional provision may be as objectionable as a legislative act,⁶² and

Co. v. Easton, 121 U. S. 391, 7 S. Ct. 919, 30 L. ed. 1059; *Pinney v. Nelson*, 183 U. S. 147, 22 S. Ct. 52, 46 L. ed. 125; *Central Land Co. v. Laidley*, 159 U. S. 112, 16 S. Ct. 83, 40 L. ed. 91; *Turner v. Wilkes County*, 173 U. S. 464, 19 S. Ct. 465, 43 L. ed. 768.

⁵⁴ *Blair v. Ostrander*, 109 Iowa, 204, 77 Am. St. Rep. 532, 80 N. W. 330, 47 L. R. A. 469.

⁵⁵ *Owings v. Speed*, 5 Wheat. 421, 5 L. ed. 124; *Blanque's Syndic v. Beale*, 1 Mart. (La.), N. S., 429.

⁵⁶ *League v. De Young*, 11 How. 203, 13 L. ed. 657; *Herman v. Phalen*, 14 How. 83, 14 L. ed. 334.

⁵⁷ *Thornton v. Hooper*, 14 Cal. 9.

⁵⁸ *King v. Dedham Bank*, 15 Mass. 447, 8 Am. Dec. 112.

⁵⁹ *Plock v. Cobb*, 64 Ala. 127; *Floyd v. Blanding*, 54 Cal. 41; *Cole v. La Chambre*, 31 La. Ann. 41; *Louisiana v. New Orleans*, 32 La. Ann. 493; *Danolds v. State*, 89 N. Y. 36, 42 Am. Rep. 277.

⁶⁰ *Churchman v. Martin*, 54 Ind. 380.

⁶¹ *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 148, 21 S. Ct. 575, 45 L. ed. 788; *Southwest Missouri Light Co. v. Joplin*, 101 Fed. 23.

⁶² *Dodge v. Woolsey*, 18 How. 360, 15 L. ed. 401; *Railroad Co. v. McClure*, 10 Wall. 511, 19 L. ed. 997; *Delmas v. Insurance Co.*, 14 Wall. 667, 20 L. ed. 757; *Gunn v. Barry*, 15 Wall. 623, 21 L. ed. 212; *Concord v. Portsmouth Savings Bank*, 92 U. S. 630, 23 L. ed.

rights acquired under one constitution cannot be impaired by a later one or by an amendment.⁶³

While, however, a change in the state constitution cannot relieve a state from its obligations contracted under the original constitution,⁶⁴ a constitutional amendment declaring void state bonds which are still in the possession of the state and have not passed into the hands of a bona fide holder does not contravene this provision.⁶⁵ A constitutional provision which is merely directory, requiring legislation to carry it into effect, cannot be held void;⁶⁶ the question must be presented in a suit for the enforcement of the contract alleged to be impaired by the provision,⁶⁷ and as a suit cannot be maintained by virtue of such a constitutional provision without some reference to legislation enacted under it,⁶⁸ all laws in force previous to the enactment

628; *Moultrie County v. Savings Bank*, 92 U. S. 635, 23 L. ed. 631; *New Orleans Gaslight Co. v. Louisiana Light Co.*, 115 U. S. 672, 6 S. Ct. 252, 29 L. ed. 516; *Bier v. McGehee*, 148 U. S. 140, 13 S. Ct. 580, 37 L. ed. 397; *Houston etc. Ry. v. Texas*, 170 U. S. 261, 18 S. Ct. 610, 42 L. ed. 1023; *In re McLean*, 2 Bank Reg. 173, Fed. Cas. No. 8878; *Marsh v. Burroughs*, 1 Woods, 463, Fed. Cas. No. 9112; *Osborn v. Nicholson*, 1 Dill. 235, Fed. Cas. No. 10,595; *Hawkins v. Filkins*, 24 Ark. 286; *Jacoway v. Denton*, 25 Ark. 625; *McNealy v. Gregory*, 13 Fla. 417; *Homestead Cases*, 23 Gratt. 266, 12 Am. Rep. 507; *Edwards v. Jager*, 19 Ind. 407; *Logwood v. Planters' Bank*, 1 Minor, 23; *Chicago v. Rumsey*, 87 Ill. 348; *Ex parte Lee's Bank*, 21 N. Y. 9; *Rutland v. Copes*, 15 Rich. 84; *Moore v. New Orleans*, 32 La. Ann. 747; *State v. Hickman*, 9 Mont. 379, 23 Pac. 743, 8 L. R. A. 403; *Powell v. Madison*, 107 Ind. 115, 8 N. E. 35; *Hazen v. Union Bank*, 1 Sneed, 115; *Union Bank v. State*, 9 Yerg. 490; *Jones v. Brandon*, 48 Ga. 593; *Chambliss v. Jordan*, 50 Ga. 81.

⁶³ *Pacific R. R. Co. v. McGuire*, 20 Wall. 42, 22 L. ed. 282; *Keith v. Clark*, 97 U. S. 454, 24 L. ed. 1071; *Poindexter v. Greenhow*, 114 U. S. 291, 5 S. Ct. 914, 29 L. ed. 185; *Canal Company's Case*, 33 Md. 626, 35 Atl. 365.

⁶⁴ *Dodge v. Woolsey*, 18 How. 360, 15 L. ed. 401; *Matheny v. Golden*, 5 Ohio St. 361.

⁶⁵ *Bier v. McGehee*, 148 U. S. 140, 13 S. Ct. 580, 37 L. ed. 397.

⁶⁶ *Groves v. Slaughter*, 15 Pet. 600, 10 L. ed. 800; *State v. Buckley*, 54 Ala. 616; *In re Perkins*, 2 Cal. 455; *Marshall v. Sherman*, 148 N. Y. 18, 51 Am. St. Rep. 657, 42 N. E. 420, 34 L. R. A. 757.

⁶⁷ *State v. Burke*, 33 La. Ann. 498.

⁶⁸ *Morley v. Thayer*, 3 Fed. 740.

of the directory provision remain in force, and contracts must be held to be governed thereby.⁶⁹

Only municipal ordinances passed under the supposed authority of a legislative act become "laws" of a state within the prohibition against impairment,⁷⁰ and this is also true of an ordinance not involving the exercise of legislative power.⁷¹

Judicial decisions construing a contract or statute are not "laws" within the meaning of this prohibition;⁷² to come within the prohibition, a contract must be impaired by legislative act and not alone by judicial decision.⁷³ So where a state may repeal a law without impairing the obligation of existing contracts an erroneous decision that the law has been repealed does not impair the obligation of such contracts;⁷⁴ but, on the other hand, where a state has power to exempt property from taxation a decision to the effect that a law so doing is unconstitutional impairs a contract created by that law.⁷⁵ It is only where a decision gives effect to a law alleged to impair contract obligations that the supreme court acquires jurisdiction to review a state court judgment under this clause.⁷⁶ A probate sale cannot be held to impair the obligation of a con-

⁶⁹ *New Orleans v. Wood*, 34 La. Ann. 735; *Shelton v. Marshall*, 16 Tex. 351; *Marshall v. Sherman*, 148 N. Y. 18, 51 Am. St. Rep. 657, 42 N. E. 420, 34 L. B. A. 757.

⁷⁰ *Murray v. Charleston*, 96 U. S. 440, 24 L. ed. 760; *Hamilton Gas Light Co. v. Hamilton City*, 146 U. S. 266, 13 S. Ct. 90, 36 L. ed. 963.

⁷¹ *New Orleans Waterworks v. Louisiana Sugar Co.*, 125 U. S. 31, 8 S. Ct. 748, 31 L. ed. 607.

⁷² *University v. People*, 99 U. S. 320, 25 L. ed. 387; *New Orleans Waterworks v. Louisiana Sugar Co.*, 125 U. S. 36, 8 S. Ct. 751, 31 L. ed. 607; *Hanford v. Davies*, 163 U. S. 279, 16 S. Ct. 1051, 41 L. ed. 157; *Ray v. Natural Gas Co.*, 138 Pa. St. 592, 21 Am. St. Rep. 928, 10 Atl. 1067, 12 L. B. A. 290.

⁷³ *Central Land Co. v. Laidley*, 159 U. S. 109, 16 S. Ct. 80, 40 L. ed. 91.

⁷⁴ *Baltzer v. North Carolina*, 161 U. S. 246, 16 S. Ct. 500, 40 L. ed. 664.

⁷⁵ *Mobile R. R. v. Tennessee*, 153 U. S. 495, 14 S. Ct. 971, 38 L. ed. 793.

⁷⁶ *New Orleans Waterworks Co. v. Louisiana*, 185 U. S. 351, 22 S. Ct. 691, 22 L. ed. 936.

tract.⁷⁷ While, in general, legislative action is necessary in order to violate the provision against impairment, yet the law as established by judicial construction at the time a contract was made cannot be changed by judicial construction so as to impair that contract.⁷⁸ If a contract was valid at the time it was made no subsequent legislation, decision, construction or alteration of the law can render it invalid,⁷⁹ and a probate sale made under a law held valid at the time it was made must be sustained,⁸⁰ and partition made by a court held at the time to have jurisdiction cannot be nullified by a later construction;⁸¹ but this rule does not require that the courts put the same construction upon two successive statutes the language of which is similar.⁸²

⁷⁷ *Hanford v. Davies*, 51 Fed. 259.

⁷⁸ *Ohio Life Ins. Co. v. Debolt*, 16 How. 432, 14 L. ed. 997; *Havemeyer v. Iowa County*, 8 Wall. 303, 18 L. ed. 38; *Butz v. Muscatine*, 8 Wall. 584, 19 L. ed. 490; *Olcott v. Supervisors*, 16 Wall. 590, 21 L. ed. 382; *Pine Grove v. Talcott*, 19 Wall. 658, 22 L. ed. 227; *Chicago v. Sheldon*, 9 Wall. 55, 19 L. ed. 594; *City v. Lamson*, 9 Wall. 486, 19 L. ed. 725; *Taylor v. Ypsilanti*, 105 U. S. 72, 26 L. ed. 1008; *Louisiana v. Pilebury*, 105 U. S. 294, 26 L. ed. 1090; *Shapleigh v. San Angelo*, 167 U. S. 657, 42 L. ed. 310; *Los Angeles v. Los Angeles City Water Co.*, 177 U. S. 575, 44 L. ed. 886.

⁷⁹ *Pine Grove v. Talcott*, 19 Wall. 678, 20 L. ed. 227, affirming 1 Flipp. 130, Fed. Cas. No. 13,735; *Commissioners v. Thayer*, 94 U. S. 642, 24 L. ed. 133; *United States v. New Orleans*, 98 U. S. 397, 25 L. ed. 225; *Commissioners v. Lellew*, 99 U. S. 628, 25 L. ed. 333; *Pana v. Bowler*, 107 U. S. 541, 20 S. Ct. 704, 27 L. ed. 424; *Milner v. Pensacola*, 2 Woods, 641, Fed. Cas. No. 9619; *Foote v. Johnson County*, 5 Dill. 285, Fed. Cas. No. 4912; *United States v. Treasurer*, 1 Dill. 528, 2 Abb. U. S. 60, Fed. Cas. No. 16,538; *United States v. Judges*, 32 Fed. 715; *Bank v. Commissioners*, 90 Fed. 10; *Illinois Cent. R. R. v. McLean County*, 17 Ill. 291; *Hunsaker v. Wright*, 39 Ill. 146; *Newstadt v. Illinois Cent. R. R.*, 31 Ill. 484; *Haskett v. Maxey*, 134 Ind. 191, 33 N. E. 360, 19 L. R. A. 379.

⁸⁰ *Hall v. Wells*, 54 Miss. 301; *Myers v. Boyd*, 144 Ind. 499, 43 N. E. 567.

⁸¹ *Levy v. Hitscher*, 40 La. Ann. 508, 4 South. 476.

⁸² *Wood v. Brady*, 150 U. S. 22, 14 S. Ct. 6, 37 L. ed. 981.

— Retrospective Laws.*

The inhibition is not aimed at all laws of a retrospective nature; such laws do not necessarily violate the obligation of contracts.⁸³ Accordingly, while retrospective statutes are, in general, to be condemned, and statutes should be construed, if possible, to operate prospectively,⁸⁴ yet if they do not violate the obligation of contracts or partake of the character of ex post facto laws they violate no constitutional provision.⁸⁵

Remedial or curative legislation does not impair contract obligations, but rather tends to confirm them.⁸⁶ Of this nature

⁸³ *Locke v. New Orleans*, 4 Wall. 173, 18 L. ed. 334; *Watson v. Mercer*, 8 Pet. 111, 8 L. ed. 876; *Curtis v. Whitney*, 13 Wall. 70, 20 L. ed. 513; *Blount v. Windley*, 95 U. S. 180, 24 L. ed. 424; *Freland v. Williams*, 131 U. S. 420, 9 S. Ct. 768, 33 L. ed. 193; *Williams v. Paine*, 169 U. S. 79, 18 S. Ct. 288, 42 L. ed. 658; *Eastman v. Clackamas County*, 12 Saw. 624, 32 Fed. 31; *Atwater v. Seely*, 1 McCrary, 268, 2 Fed. 137; *Smith v. Callaghan*, 66 Iowa, 555, 24 N. W. 51; *Baldwin v. Newark*, 38 N. J. 159; *Baughner v. Nelson*, 9 Gill, 305, 52 Am. Dec. 698; *Wilson v. Hardesty*, 1 Md. Ch. 68; *Chestnut v. Shanes*, 16 Ohio, 610, 47 Am. Dec. 396.

⁸⁴ *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 391; *Dash v. Van Kleeck*, 7 Johns. 502, 5 Am. Dec. 308; *Davis v. Minor*, 1 How. (Miss.) 193, 28 Am. Dec. 331; *Denio v. Van Riper*, 16 N. J. L. 14; *Boston v. Cummins*, 16 Ga. 107, 60 Am. Dec. 720.

⁸⁵ *Satterlee v. Matthewson*, 2 Pet. 413, 7 L. ed. 458; *Wilkinson v. Leland*, 2 Pet. 661, 7 L. ed. 542; *Charles River Bridge v. Warren Bridge*, 11 Pet. 539, 9 L. ed. 773; *Drehman v. Stife*, 8 Wall. 603, affirming 41 Mo. 184, 97 Am. Dec. 268; *Blount v. Windley*, 95 U. S. 180, 24 L. ed. 424; *Gray v. Munroe*, 1 McLean, 532, Fed. Cas. No. 5724; *Johnston v. Van Dyke*, 6 McLean, 441, Fed. Cas. No. 7426; *McAfee v. Covington*, 71 Ga. 274, 51 Am. Rep. 265; *Elliott v. Mayfield*, 4 Ala. 423; *Davis v. Ballard*, 1 J. J. Marsh. 563; *Andrews v. Russell*, 7 Blackf. 574; *Wilson v. Hardesty*, 1 Md. Ch. 66; *Bay v. Gage*, 36 Barb. 447; *Wilder v. Lumpkin*, 4 Ga. 209; *Cochran v. Van Surley*, 20 Wend. 372, 32 Am. Dec. 573; *Burch v. Newbury*, 10 N. Y. 391; *Gage v. Gage*, 66 N. H. 294, 29 Atl. 549, 28 L. R. A. 829; *Sharpless v. Philadelphia*, 21 Pa. St. 165, 59 Am. Dec. 770; *Coles v. Madison County*, Breese, 156, 12 Am. Dec. 163; *Scott v. Smart*, 1 Mich. 295; *Danville v. Pace*, 25 Gratt. 10, 18 Am. Rep. 669; *Henderson R. R. v. Dickerson*, 17 B. Mon. 177, 66 Am. Dec. 149.

⁸⁶ *Watson v. Mercer*, 8 Pet. 111, 8 L. ed. 876, affirming 1 Watts 356; *Thomson v. Lee County*, 3 Wall. 331, 18 L. ed. 177; *Mechanics'*

*See, also, ante, p. 264.

are laws curing defects in titles to land;⁸⁷ validating defective acknowledgments;⁸⁸ validating a married woman's power of attorney and sales made thereunder;⁸⁹ validating void or voidable contracts;⁹⁰ validating marriages otherwise illegal or void for some minor defect;⁹¹ curing defects or invalidity of bond issues resulting from irregularities or want of power;⁹² validating judgments rendered in excess of court's jurisdiction.⁹³

etc. *Bank v. Union Bank*, 22 Wall. 298, 22 L. ed. 871; *Ritchie v. Franklin County*, 22 Wall. 75, 22 L. ed. 825; *McFaddin v. Evans-Snider-Buel Co.*, 185 U. S. 513, 22 S. Ct. 758, 46 L. ed. 1012; *Randall v. Kreiger*, 23 Wall. 146, 23 L. ed. 124; *Owen v. Peebles*, 42 Ala. 343; *Elliott v. Pearce*, 20 Ark. 515; *Sumner v. Mitchell*, 29 Fla. 203, 30 Am. St. Rep. 113, 10 South. 567, 14 L. R. A. 815; *McMillen v. County Judge*, 6 Iowa, 394; *Smith v. Callaghan*, 66 Iowa, 555, 24 N. W. 51; *Cheanut v. Shanes*, 16 Ohio, 610, 47 Am. Dec. 396; *Williams v. Milwaukee etc. Assn.*, 79 Wis. 531, 48 N. W. 667.

⁸⁷ *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876, affirming 1 Watts, 356; *Wilkinson v. Leland*, 2 Pet. 660, 7 L. ed. 542; *Kearney v. Taylor*, 15 How. 517, 14 L. ed. 787; *Webb v. Den*, 17 How. 578, 15 L. ed. 35; *Randall v. Kreiger*, 23 Wall. 146, 150, 23 L. ed. 124; *Williams v. Paine*, 169 U. S. 79, 18 S. Ct. 288, 42 L. ed. 658; *McFaddin v. Evans-Snider-Buel Co.*, 185 U. S. 513, 22 S. Ct. 758, 46 L. ed. 1012; *Atwater v. Seely*, 1 McCrary, 268, 2 Fed. 137; *Smith v. Callaghan*, 66 Iowa, 555, 24 N. W. 51; *Mitchell v. Campbell*, 19 Or. 306, 24 Pac. 457; *Lane v. Nelson*, 75 Pa. St. 410.

⁸⁸ *Carpenter v. Dexter*, 8 Wall. 525, 19 L. ed. 426; *Elliott v. Pearce*, 20 Ark. 515; *Green v. Abraham*, 43 Ark. 424; *Johnson v. Richardson*, 44 Ark. 373.

⁸⁹ *Randall v. Kreiger*, 23 Wall. 147, 23 L. ed. 124, affirming 2 Dill. 448, Fed. Cas. No. 11,554; *Dentzel v. Waldie*, 30 Cal. 144.

⁹⁰ *Ewell v. Daggs*, 108 U. S. 151, 2 S. Ct. 414, 27 L. ed. 682; *Gross v. United States Mortgage Co.*, 108 U. S. 488, 9 S. Ct. 947, 27 L. ed. 795; *Mutual Ins. Co. v. Winne*, 20 Mont. 40, 49 Pac. 452; *Gray v. Monongahela Nav. Co.*, 2 Watts & S. 160, 37 Am. Dec. 502; *Danville v. Pace*, 25 Gratt. 12, 18 Am. Rep. 670.

⁹¹ *Callahan v. Callahan*, 36 S. C. 464, 15 S. E. 730; *Goshen v. Stonington*, 4 Conn. 209, 10 Am. Dec. 128; *Boston v. Cummins*, 16 Ga. 107, 60 Am. Dec. 720.

⁹² *Thomson v. Lee County*, 3 Wall. 331, 18 L. ed. 177; *Beloit v. Morgan*, 7 Wall. 624, 19 L. ed. 205; *Ritchie v. Franklin County*, 22 Wall. 75, 22 L. ed. 825; *Anderson v. Santa Anna*, 116 U. S. 361, 6 S. Ct. 413, 29 L. ed. 633; *Bolles v. Brimfield*, 120 U. S. 763, 7 S. Ct. 736, 30 L. ed. 786; *St. Joseph Township v. Rogers*, 16 Wall. 663; *McMillen v. County Judge*, 6 Iowa, 394; *Schenck v. Jeffersonville*,

It is within the power of the legislature also to validate erroneous assessments;⁹⁴ to authorize a tax auditor to go back for a certain period and correct false returns;⁹⁵ to provide for the taxation of lands which have improperly escaped taxation;⁹⁶ to change the method of taxing corporations;⁹⁷ to provide that taxes already delinquent shall bear interest from the date delinquency commenced;⁹⁸ to validate an illegal tax after suit brought to recover same.⁹⁹ But legislative ratification cannot cure undisclosed fraud,¹⁰⁰ nor can it validate a tax sale void for want of notice.¹⁰¹

Laws changing rules of procedure applicable to the trial of pre-existing cases do not violate this provision; a party must submit to having his cause tried according to the rules in force at the time of the trial,¹⁰² unless the change affects the rights of a party to his disadvantage.¹⁰³ Accordingly a person has no vested right to a defense based upon an informality not affecting his substantial equities,¹⁰⁴ but a law providing that in

152 Ind. 217, 52 N. E. 216; *Cutler v. Board of Supervisors*, 56 Miss. 122; *People v. Mitchell*, 35 N. Y. 552; *Williams v. Duanesburgh*, 66 N. Y. 137; *Supervisors v. Randolph*, 89 Va. 622, 16 S. E. 724.

⁹² *Mechanics' etc. Bank v. Union Bank*, 22 Wall. 298, 22 L. ed. 871.

⁹⁴ *Mattingly v. Dist. of Columbia*, 97 U. S. 691, 24 L. ed. 1098; *Williams v. Supervisors*, 122 U. S. 164, 7 S. Ct. 1246, 30 L. ed. 1088.

⁹⁵ *Sturges v. Carter*, 114 U. S. 516, 5 S. Ct. 1014, 29 L. ed. 240.

⁹⁶ *Winona etc. Land Co. v. Minnesota*, 159 U. S. 529, 16 S. Ct. 83, 40 L. ed. 247; *New Orleans v. New Orleans etc. R. R.*, 35 La. Ann. 682.

⁹⁷ *Piqua Branch of State Bank v. Knoop*, 16 How. 408, 14 L. ed. 977.

⁹⁸ *League v. Texas*, 184 U. S. 161, 22 S. Ct. 475, 46 L. ed. 478.

⁹⁹ *Grim v. Wiessenberg etc. Dist.*, 57 Pa. St. 435, 98 Am. Dec. 239.

¹⁰⁰ *Santa Ana Water Co. v. San Buenaventura*, 65 Fed. 328.

¹⁰¹ *Forster v. Forster*, 129 Mass. 566.

¹⁰² *Willard v. Harvey*, 24 N. H. 344; *Rich v. Flanders*, 39 N. H. 313.

¹⁰³ *Simpson v. City Savings Bank*, 56 N. H. 460, 22 Am. Rep. 493.

¹⁰⁴ *Danforth v. Groton Water Co.*, 178 Mass. 472, 86 Am. St. Rep. 495, 59 N. E. 1033.

all suits pending on contracts made before a certain date the plaintiff must show the due payment of all taxes cannot retro-act.¹⁰⁵

A law requiring the payment of an equitable claim not legally due does not violate any constitutional provision,¹⁰⁶ nor does a statute passed after a judgment in favor of a bank allowing a setoff against it of the bank's notes procured subsequently.¹⁰⁷

A judicial decision enjoining the ringing of mill bells at certain hours gives no vested right which cannot be impaired by a statute authorizing the ringing at such hours.¹⁰⁸

— States' Power of Taxation.

The provisions of this clause are a limitation upon the taxing power of a state as well as upon any other litigation; the manner of impairment is immaterial,¹⁰⁹ and that power is always subject to the qualification that it must not be exercised so as to impair contract obligations.¹¹⁰ An act imposing conditions upon the holders of county warrants or requiring the acceptance of a lower rate of interest thereon is void as impairing their obligation.¹¹¹ Such would be the effect of a statute authorizing that a tax imposed upon city stock be retained by the city treasurer out of the interest on the stock.¹¹² A statute requiring the tax upon state bonds to be deducted from the coupons originally attached to them when tendered in payment of debts due the state is void as to coupons already separated from bonds held by a different person.¹¹³ The taxation of city bonds not

¹⁰⁵ *Walker v. Whitehead*, 16 Wall. 316, 21 L. ed. 357.

¹⁰⁶ *New Orleans v. Clark*, 95 U. S. 654, 24 L. ed. 521.

¹⁰⁷ *Blount v. Windley*, 95 U. S. 180, 24 L. ed. 424.

¹⁰⁸ *Sawyer v. Davis*, 136 Mass. 239, 49 Am. Rep. 27.

¹⁰⁹ *Murray v. Charleston*, 96 U. S. 443, 24 L. ed. 760; *Jenkins v. Charleston*, 96 U. S. 449, 24 L. ed. 764; *Ladd v. Portland*, 32 Or. 271, 67 Am. St. Rep. 526, 51 Pac. 654.

¹¹⁰ *Broadfoot v. Fayetteville*, 124 N. C. 478, 70 Am. St. Rep. 613, 32 S. E. 804.

¹¹¹ *Brewer v. Otoe County*, 1 Neb. 373; *McCracken v. Moody*, 53 Ark. 81.

¹¹² *Murray v. Charleston*, 96 U. S. 443, 24 L. ed. 760.

¹¹³ *Hartman v. Greenhow*, 102 U. S. 672, 26 L. ed. 271.

liable to taxation impairs them;¹¹⁴ but there is no prohibition against the taxation by a state of bonds issued by itself for borrowed money.¹¹⁵ A statute authorizing the imposition of a tax according to a previous assessment is not unconstitutional.¹¹⁶

A tax upon a new subject, or an increased tax upon an old one, does not impair the obligation of any contract.¹¹⁷ A bond received as security for the purchase of property may be taxed to any extent required by the state government,¹¹⁸ and a statute imposing a tax upon mortgages is applicable to prior mortgages.¹¹⁹ So also a constitutional provision making the mortgagee primarily liable for taxes assessed against the property does not impair the obligation of a prior mortgage containing no stipulation for payment of taxes by the mortgagor;¹²⁰ but where a mortgage contains an agreement on the part of the mortgagor to pay all taxes his obligation to do so cannot be impaired by a later statute.¹²¹ A statute authorizing the mortgagor to pay the tax in case of the mortgagee's default and to deduct the amount from the principal, is unobjectionable as applied to an existing mortgage;¹²² so also as to a law authoriz-

¹¹⁴ *Antoni v. Greenhow*, 107 U. S. 780, 7 S. Ct. 91, 27 L. ed. 468; *De Vignier v. New Orleans*, 16 Fed. 11; *Mayor of Macon v. Jones*, 67 Ga. 492; *State v. Board of Assessors*, 35 La. Ann. 373.

¹¹⁵ *Murray v. Charleston*, 96 U. S. 447, 24 L. ed. 760; *Champaign County Bank v. Smith*, 7 Ohio St. 42; *People v. Home Ins. Co.*, 29 Cal. 533.

¹¹⁶ *Locke v. New Orleans*, 4 Wall. 173, 18 L. ed. 334; *Frellson v. Mahan*, 21 La. Ann. 104.

¹¹⁷ *North Missouri R. R. v. Maguire*, 20 Wall. 46, affirming 40 Mo. 490, 8 Am. Rep. 141.

¹¹⁸ *Weston v. Charleston*, 2 Pet. 467, Harp. 340, 7 L. ed. 481.

¹¹⁹ *Dundee Mtg. Trust Inv. Co. v. Parrish*, 24 Fed. 107; *McCoppin v. McCartney*, 60 Cal. 367; *Mumford v. Sewall*, 11 Or. 67, 4 Pac. 585; *Cook v. Smith*, 30 N. J. 387.

¹²⁰ *Hay v. Hill*, 65 Cal. 383, 4 Pac. 378; *Hamill v. Littner*, 7 Pac. 707.

¹²¹ *Beckman v. Skaggs*, 59 Cal. 544.

¹²² *Common Council of Detroit v. Board of Assessors*, 91 Mich. 78, 51 N. W. 787.

ing a borrower to deduct the amount of a tax on a loan from the interest.¹²³

A tax upon the annual rent reserved in a lease does not impair the obligation of an existing lease.¹²⁴ The repeal of a law providing a judgment tax is invalid as to prior judgments.¹²⁵ A statute providing that drainage assessments shall constitute a lien upon the land assessed does not violate the obligation of the contract by which an owner holds his land,¹²⁶ nor does a statute authorizing sales for delinquent taxes although such statute applies to taxes delinquent before it was passed.¹²⁷

A state cannot pass a law taxing a corporation if it would thereby impair the obligation of any contract.¹²⁸ So where the charter of a corporation provides for the payment of a certain amount per annum upon each share of its stock in lieu of all other taxes, an additional tax upon shares in the hands of stockholders is void,¹²⁹ and a law requiring corporations to retain, for the payment of taxes, a certain portion of the interest due on bonds held by nonresidents impairs the obligation of the contract expressed in the bonds;¹³⁰ but a different rule has been laid down when the holders are residents.¹³¹ A law pro-

¹²³ *Maltby v. Reading etc. R. R.*, 52 Pa. St. 140.

¹²⁴ *Livingston v. Hollenbeck*, 4 Barb. 9; *Loring v. State*, 16 Ohio, 590.

¹²⁵ *United States v. Lincoln County*, 5 Dill. 184, Fed. Cas. No. 15,503; *United States v. Jefferson County*, 5 Dill. 310, Fed. Cas. No. 15,472; *Sawyer v. Concordia*, 12 Fed. 754; *State v. Police Jury*, 34 La. Ann. 95; *State v. New Orleans*, 34 La. Ann. 1149.

¹²⁶ *Wabash etc. Ry. v. Commissioners*, 134 Ill. 384, 25 N. E. 781, 10 L. R. A. 285.

¹²⁷ *Haskell v. City of Burlington*, 30 Iowa, 232.

¹²⁸ *Washington University v. Rouse*, 8 Wall. 439, 19 L. ed. 498; *Home of the Friendless v. Rouse*, 8 Wall. 430, 19 L. ed. 495.

¹²⁹ *Farrington v. Tennessee*, 95 U. S. 688, 24 L. ed. 558; *Tennessee v. Whitworth*, 117 U. S. 136, 6 S. Ct. 647, 29 L. ed. 833; but see *Sandusky City Bank v. Wilbor*, 7 Ohio St. 481.

¹³⁰ *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179. But see *Ammidown v. Freeland*, 101 Mass. 303, 3 Am. Rep. 359.

¹³¹ *Commonwealth v. New York etc. Ry.*, 150 Pa. St. 234, 24 Atl. 609; *Commonwealth v. Delaware etc. Canal Co.*, 150 Pa. St. 245, 24 Atl. 599.

viding that where a railway is operated under a lease the tax shall be paid by the lessee and deducted from the rent is not void as impairing the obligation of the lease.¹³² The state may impose a tax upon its corporations as an entity as well as upon the corporation stock, its capital, or its separate corporation property, and this may be proportioned to the income or to the value of the property,¹³³ or it may repeal an existing rate and impose another and higher rate.^{133a}

The penalty fixed at the time of a delinquent tax sale cannot be altered by a subsequent statute so as to prejudice the rights of a purchaser.¹³⁴ So also where a statute provides for the return, with interest, of all money paid by a purchaser at a tax sale, if by reason of irregularity the sale cannot be consummated, a contract is created with the purchaser which cannot be impaired by a statute making such return dependent upon the order of the supervisors.¹³⁵ The sale of lands for delinquent taxes is a contract with the purchaser that he shall be entitled to have the sale completed and a deed issued according to the provisions of existing law, and the repeal of a provision empowering the auditor to issue deeds is objectionable as impairing its obligation.¹³⁶ Where, however, a statute merely prescribes the time within which deeds must be made after sale, it is not void as to sales made before its passage,¹³⁷ and the same is true of a statute requiring the holders of tax certificates to give notice to owners or occupants of lands before they can obtain deeds.¹³⁸

A statute of limitation prescribing the time within which the holder of a tax deed must sue to recover possession of the land

¹³² *Vermont etc. Ry. Co. v. Vermont Cent. Ry. Co.*, 63 Vt. 1, 21 Atl. 262, 10 L. E. A. 562.

¹³³ *Delaware R. R. Tax*, 18 Wall. 232, 21 L. ed. 888.

^{133a} *Sandusky City Bank v. Wilbor*, 7 Ohio St. 481; *St. Joseph v. Hannibal etc. R. R.*, 39 Mo. 276.

¹³⁴ *State v. Capaeller*, 6 Ohio Dec. 702.

¹³⁵ *Corbin v. Washington County Commrs.*, 3 Fed. 356.

¹³⁶ *Bruce v. Schuyler*, 4 Gilm. 221, 46 Am. Dec. 447.

¹³⁷ *Tuttle v. Block*, 104 Cal. 443, 38 Pac. 109.

¹³⁸ *Coulter v. Stafford*, 56 Fed. 564. But see *Gage v. Stewart*, 127 Ill. 207, 11 Am. St. Rep. 116, 19 N. E. 702.

conveyed applies to purchasers at sales before its passage,¹³⁹ and it is competent for the legislature to prescribe the form of tax deeds to be given on previous sales, where no attempt is made to give a less effect to such deeds than that given by the law in force when the sale was made.¹⁴⁰ A statute merely authorizing purchasers to surrender land purchased and recover the price paid over and above the amount of taxes for which the sale was made and costs of the sale, does not impair any contract obligation.¹⁴¹ A purchaser under a statute which makes his deed conclusive evidence of the regularity of the proceedings anterior to the sale acquires a contractual right which cannot be impaired by a law providing that such deeds shall be prima facie evidence only of regularity.¹⁴² The courts favor the right to redeem land sold for taxes,¹⁴³ but the legislature has no power to pass a law extending the time of redemption from tax sales previously made, notwithstanding the right has not yet been barred.¹⁴⁴ On the other hand, a statute prescribing requirements to secure the right of redemption and providing for notice to the party in possession does not impair the obligation of the contract made at the sale,¹⁴⁵ nor does a statute authorizing redemption at any time before the deed executed upon such sale is recorded.¹⁴⁶

— State.

The prohibition is against legislation by a "state," but this extends to municipal ordinances having the force of law within

¹³⁹ *Barrett v. Holmes*, 102 U. S. 656, 26 L. ed. 291; *Jones v. Randle*, 68 Ala. 264.

¹⁴⁰ *Lain v. Shepardson*, 18 Wis. 59.

¹⁴¹ *Smith v. Merchand*, 7 Serg. & B. 260, 10 Am. Dec. 465.

¹⁴² *Tracy v. Reed*, 38 Fed. 69; *Marx v. Hanthorn*, 30 Fed. 679; *Strode v. Washer*, 17 Or. 50, 16 Pac. 926; *Smith v. Cleveland*, 17 Wis. 556.

¹⁴³ *Barrett v. Holmes*, 102 U. S. 657, 26 L. ed. 291.

¹⁴⁴ *Hull v. State*, 29 Fla. 79, 30 Am. St. Rep. 95, 11 South. 97, 13 L. R. A. 308; *Dikeman v. Dikeman*, 11 Paige, 484; *State v. Fylpaa*, 3 S. Dak. 586, 54 N. W. 599; *Robinson v. Howe*, 13 Wis. 341.

¹⁴⁵ *Curtis v. Whitney*, 13 Wall. 68, 20 L. ed. 513.

¹⁴⁶ *International Ins. Co. v. Scales*, 27 Wis. 640.

the municipality,¹⁴⁷ but in order to become a law of the state such an ordinance must be passed under the supposed authority of a legislative act,¹⁴⁸ and must involve the exercise of legislative power.¹⁴⁹

A state in rebellion had no more power to do an act prohibited by the constitution than before the rebellion or after its restoration to its normal place in the Union, and so could not pass laws impairing the obligation of contracts;¹⁵⁰ nor could it adopt provisions having that effect in its constitution preparatory to the restoration of its former relations.¹⁵¹ All acts of such states, however, not in conflict with the constitution and laws of the United States were valid.¹⁵² So a mortgage was not invalid because the loan was in Confederate states bonds;¹⁵³ such consideration was unlawful only when used in aid of the Rebellion,¹⁵⁴ and their voluntary acceptance extinguished the debt.¹⁵⁵ The payment of Confederate bonds to an executor was

¹⁴⁷ *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 148, 21 S. Ct. 575, 45 L. ed. 788; *Iron Mountain Ry. v. Memphis*, 96 Fed. 126, 37 Ga. 493.

¹⁴⁸ *Murray v. Charleston*, 96 U. S. 440, 24 L. ed. 760; *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 266, 13 S. Ct. 90, 36 L. ed. 963.

¹⁴⁹ *New Orleans Waterworks v. Louisiana Sugar Co.*, 125 U. S. 31, 8 S. Ct. 748, 31 L. ed. 607.

¹⁵⁰ *White v. Hart*, 13 Wall. 652, 20 L. ed. 685; *Gunn v. Barry*, 15 Wall. 610, 21 L. ed. 212; *Horn v. Lockhart*, 17 Wall. 581, 21 L. ed. 657; *Williams v. Bruffy*, 96 U. S. 176, 24 L. ed. 416; *Houston v. Deloach*, 43 Ala. 364, 94 Am. Dec. 689; *Powell v. Boon*, 43 Ala. 469; *Oliver v. Memphis etc. R. R.*, 30 Ark. 131.

¹⁵¹ *Gunn v. Barry*, 15 Wall. 610, 21 L. ed. 212; *White v. Hart*, 13 Wall. 652, 20 L. ed. 685; *In re Kennedy*, 2 Rich., N. S., 116; *Calhoun v. Calhoun*, 2 Rich., N. S., 283; *Homestead Cases*, 22 Gratt. 282, 12 Am. Rep. 510.

¹⁵² *Keith v. Clark*, 97 U. S. 462; *Reynolds v. Taylor*, 43 Ala. 420; *Gibbes v. G. etc. R. R.*, 13 S. C. 242.

¹⁵³ *Micou v. Ashhurst*, 55 Ala. 607.

¹⁵⁴ *Van Hoose v. Bush*, 54 Ala. 342; *Bragg v. Tuffts*, 49 Ark. 562, 6 S. W. 161; *Isaacs v. Richmond*, 90 Va. 32, 17 S. E. 761.

¹⁵⁵ *McQueen v. McQueen*, 55 Ala. 433; *Hester v. Watkins*, 51 Ala. 44.

valid,¹⁵⁶ and a guardian is entitled to credit for and chargeable with the value of such bonds.¹⁵⁷

Contracts Protected—In General.

A contract is an agreement by which a party undertakes to do or not to do a particular thing;¹⁵⁸ a transaction between two or more persons in which each reciprocally acquires a right against, and comes under an obligation to, the other.¹⁵⁹ While a contract is ordinarily said to be a compact between two or more persons,¹⁶⁰ the character of the parties to it does not affect the application of this prohibition.¹⁶¹ For the purposes of this clause the term embraces agreements between states¹⁶² between states and individuals,¹⁶³ between states and corpora-

¹⁵⁶ *Blount v. Moore*, 54 Ala. 360; *Foscue v. Lyon*, 55 Ala. 441.

¹⁵⁷ *Ferguson v. Lowery*, 54 Ala. 510, 25 Am. Rep. 718; *Harbin v. Bell*, 54 Ala. 389.

¹⁵⁸ *Sturges v. Crowninshield*, 4 Wheat. 197, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 317, 6 L. ed. 606; *Green v. Biddle*, 8 Wheat. 92, 5 L. ed. 547; *Edwards v. Kearzey*, 96 U. S. 600, 24 L. ed. 793; *Cincinnati etc. Ry. v. McKeen*, 64 Fed. 46; *Woodruff v. State*, 3 Ark. 285; *Trustees v. Rider*, 13 Conn. 87; *Robinson v. Magee*, 9 Cal. 81; *Depuy v. Stewart*, 3 Wend. 139, 20 Am. Dec. 675; *Farnsworth v. Vance*, 3 Cold. 108.

¹⁵⁹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 656, 4 L. ed. 629.

¹⁶⁰ *Fletcher v. Peck*, 6 Cr. 136, 3 L. ed. 162.

¹⁶¹ *Trustees v. Rider*, 13 Conn. 87; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72.

¹⁶² *Green v. Biddle*, 8 Wheat. 92, 5 L. ed. 547; *Achison v. Huddleston*, 12 How. 298, 13 L. ed. 993, 7 Gill. 179; *Pennsylvania v. Wheeling etc. Br. Co.*, 13 How. 560, 14 L. ed. 249; *Searight v. Stokes*, 3 How. 151, 11 L. ed. 537; *Neil v. State*, 8 How. 720, 11 L. ed. 800; *Von Hoffman v. Quincy*, 4 Wall. 550, 18 L. ed. 403; *Spooner v. McConnell*, 1 McLean, 337, Fed. Cas. No. 13,245; *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229; *Cox v. State*, 3 Blackf. 193; *Canal Co. v. Railroad Co.*, 4 Gill & J. 1; *Hogg v. Canal Co.*, 5 Ohio. 410.

¹⁶³ *Providence Bank v. Billings*, 4 Pet. 560, 7 L. ed. 939; *Piqua Branch Bank v. Knoop*, 16 How. 389, 14 L. ed. 977; *Murray v. Charleston*, 96 U. S. 445, 24 L. ed. 760; *Hartman v. Greenhow*, 102 U. S. 679, 26 L. ed. 271; *Hall v. Wisconsin*, 103 U. S. 8, 26 L. ed. 302; *Wolf v. New Orleans*, 103 U. S. 367, 26 L. ed. 395; *Poindexter v. Greenhow*, 114 U. S. 286, 5 S. Ct. 912, 29 L. ed. 185; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 673, 6 S. Ct. 264, 29 L. ed. 516;

tions,¹⁶⁴ between a state and the United States.¹⁶⁵ Corporations are within the protection of the clause to the same extent as individuals.¹⁶⁶ Mere social compacts between a state and its citizens are not comprehended by the prohibition;¹⁶⁷ it protects contracts relating to rights which are not governmental.¹⁶⁸

The prohibition against impairing contract obligations includes and protects obligations or legalities whereby one party binds himself or becomes bound to pay a sum of money, or to perform or omit to perform a certain act,¹⁶⁹ contracts which respect property or some object of value, and which confer rights that may be asserted in a court of justice.¹⁷⁰ It is not necessary that a contract be executory; the clause includes executed con-

Sala v. New Orleans, 2 Woods, 194, Fed. Cas. No. 12,246; *State v. County Court*, 19 Ark. 367.

¹⁶⁴ *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 627, 4 L. ed. 629; *West River Bridge Co. v. Dix*, 6 How. 531, 12 L. ed. 535; *Bridge Proprietors v. Hoboken Co.*, 1 Wall. 146, 17 L. ed. 571; *Miller v. State*, 15 Wall. 488, 21 L. ed. 98; *The Delaware R. R. Tax*, 18 Wall. 225, 21 L. ed. 888; *Chicago etc. R. R. v. Iowa*, 94 U. S. 161, 24 L. ed. 94; *Railway v. Philadelphia*, 101 U. S. 540, 25 L. ed. 912; *Stone v. Mississippi*, 101 U. S. 816, 25 L. ed. 1079.

¹⁶⁵ *McGee v. Mathis*, 4 Wall. 155, 18 L. ed. 314; *Trustees v. St. John's R. R.* 16 Fla. 542; *Roberts v. Missouri etc. R. R.*, 43 Kan. 108, 22 Pac. 1008; *Koenig v. Omaha etc. R. R.*, 3 Neb. 382; *Lowry v. Francis*, 2 Yerg. 534.

¹⁶⁶ *Fletcher v. Peck*, 6 Cr. 136, 3 L. ed. 162; *State v. Wilson*, 7 Cr. 164, 3 L. ed. 303, 2 N. J. 300; *Terrett v. Taylor*, 9 Cr. 43, 3 L. ed. 650; *Town of Pawlet v. Clark*, 9 Cr. 292, 3 L. ed. 735; *Green v. Biddle*, 8 Wheat. 92, 5 L. ed. 547; *Astrom v. Hammond*, 3 McLean, 107, Fed. Cas. No. 596; *Derby Turnpike Co. v. Parks*, 10 Conn. 52; *Trustees v. Rider*, 13 Conn. 87; *Stanmire v. Taylor*, 3 Jones (N. C.), 207.

¹⁶⁷ *Billings v. Hall*, 7 Cal. 1; *State v. Paul*, 5 R. I. 185.

¹⁶⁸ *Stone v. Mississippi*, 101 U. S. 820, 25 L. ed. 1079; *Sprayberry v. Atlanta*, 87 Ga. 125, 13 S. E. 199.

¹⁶⁹ *Woodruff v. State*, 3 Ark. 285.

¹⁷⁰ *Fletcher v. Peck*, 6 Cr. 136, 137, 3 L. ed. 162; *Green v. Biddle*, 8 Wheat. 92, 5 L. ed. 547; *Trustees Dartmouth College v. Woodward*, 4 Wheat. 656, 4 L. ed. 629; *Butler v. Pennsylvania*, 10 How. 402, 13 L. ed. 472; *Trustees v. Rider*, 13 Conn. 87; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *Swan v. Buck*, 40 Miss. 268; *Herrick v. Randolph*, 13 Vt. 530.

tracts as well.¹⁷¹ Nor need the contract be express; implied contracts are protected;¹⁷² whether the contract relates to real or personal estate, is executed or executory, by parol or under seal, the constitution preserves it inviolate as to its obligations,¹⁷³ and if a contract, which contemplates the lapse of several years before the performance of all its conditions, is valid when made, it remains so notwithstanding changes in the law.¹⁷⁴

The term "contract" presupposes a valid contract, one imposing obligations under general principles of law and not void under the constitution and laws of a state, or entered into without authority of the party sought to be charged.¹⁷⁵ A contract to be protected from impairment must be founded upon good consideration,¹⁷⁶ and a contract cannot exist without the consent or agreement of the parties to it, express or implied.¹⁷⁷ Accordingly, before the supreme court can determine whether a state law is repugnant to the obligation clause it must ap-

¹⁷¹ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *Von Hoffman v. Quincy*, 4 Wall. 549, 18 L. ed. 403; *Farrington v. Tennessee*, 95 U. S. 683, 24 L. ed. 558; *Coast Line R. R. Co. v. Mayor*, 30 Fed. 649; *State v. Illinois Cent. R. R.*, 33 Fed. 774; *St. Louis v. Western Union Tel. Co.*, 63 Fed. 46; *Stein v. Mobile*, 49 Ala. 368, 20 Am. Rep. 285; *Mobile v. Railroad Co.*, 84 Ala. 120, 5 Am. St. Rep. 346, 4 South. 108; *Myers v. English*, 9 Cal. 349; *Chanley v. Bailey*, 37 Ga. 536; *State v. Mayor etc. of Jersey City*, 31 N. J. L. 581, 86 Am. Dec. 244; *Adams v. Reed*, 11 Utah, 502, 40 Pac. 724.

¹⁷² *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *Trustees Dartmouth College v. Woodward*, 4 Wheat. 682, 4 L. ed. 629; *Fisk v. Jefferson Police Jury*, 116 U. S. 134, 6 S. Ct. 329, 29 L. ed. 587; *Woodruff v. State*, 3 Ark. 285; *St. Louis etc. Ry. v. Alexander*, 49 Ark. 194, 4 S. W. 755; *Myrick v. Battle*, 5 Fla. 345; *Leavitt v. Lovering*, 64 N. H. 609, 15 Atl. 415, 1 L. R. A. 58; *Danforth v. Robinson*, 80 Me. 472, 6 Am. St. Rep. 228, 15 Atl. 29.

¹⁷³ *Farrington v. Tennessee*, 95 U. S. 683, 684, 24 L. ed. 558; *Trustees v. Rider*, 13 Conn. 87; *Taylor v. Stearns*, 18 Gratt. 244.

¹⁷⁴ *McMurray v. Sidwell*, 155 Ind. 560, 80 Am. St. Rep. 255, 58 N. E. 722.

¹⁷⁵ *New Orleans v. New Orleans Water Works Co.*, 142 U. S. 83, 12 S. Ct. 142, 35 L. ed. 943; *People v. Roper*, 35 N. Y. 629.

¹⁷⁶ *Pearsall v. Great Northern Ry.*, 161 U. S. 667, 16 S. Ct. 705, 40 L. ed. 838.

¹⁷⁷ *Mexican etc. R. R. v. Musette*, 86 Tex. 715, 26 S. W. 1077.

pear that a legal contract is involved,¹⁷⁸ and for this purpose the bare averment of a contract is insufficient.¹⁷⁹ The mere fact that a statute impairs the obligation of contracts gives the courts no power to annul it; the question must be presented in a suit for the enforcement of a contract affected by the statute.¹⁸⁰ The ultra vires contract of a corporation is not within the protection of this clause.¹⁸¹ A state constitution is not a contract within the meaning of that term as here used.¹⁸²

A judgment is not itself a contract in the sense in which that word is used in the constitution,¹⁸³ whether it be based upon contract¹⁸⁴ or tort.¹⁸⁵ The term "contract" signifies an agreement of the minds, for mutual consideration, to do or not to do certain acts,¹⁸⁶ and a judgment cannot be said to possess

¹⁷⁸ *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 88, 12 S. Ct. 142, 35 L. ed. 943; *Douglas v. Kentucky*, 166 U. S. 500, 18 S. Ct. 199, 42 L. ed. 553.

¹⁷⁹ *City Ry. v. Citizens' R. R.*, 166 U. S. 564, 17 S. Ct. 655, 41 L. ed. 1114.

¹⁸⁰ *State v. Burke*, 33 La. Ann. 498.

¹⁸¹ *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 89, 12 S. Ct. 142, 35 L. ed. 943.

¹⁸² *Church v. Kelsey*, 121 U. S. 283, 7 S. Ct. 897, 30 L. ed. 960.

¹⁸³ *Morley v. Lake Shore etc. Ry.*, 146 U. S. 162, 13 S. Ct. 54, 36 L. ed. 925; *Wyman v. Mitchell*, 1 Cow. 316; *McCann v. New York Cent. etc. R. R.*, 50 N. Y. 176; *Keith v. Estill*, 9 Port. 669; *Rae v. Hulbert*, 17 Ill. 572; *Smith v. Harrison*, 33 Ala. 706; *Larrabee v. Baldwin*, 35 Cal. 156; *O'Brien v. Young*, 95 N. Y. 428, 47 Am. Rep. 64; *Livingston v. Livingston*, 173 N. Y. 377, 93 Am. St. Rep. 600, 66 N. E. 123; *Wyoming Nat. Bank v. Brown*, 7 Wyo. 494, 53 Pac. 291, 75 Am. St. Rep. 935.

¹⁸⁴ *Morley v. Lake Shore etc. Ry.*, 146 U. S. 162, 13 S. Ct. 54, 36 L. ed. 925; *State v. New Orleans*, 38 La. Ann. 119, 58 Am. Rep. 168; *Wyoming Nat. Bank v. Brown*, 7 Wyo. 494, 75 Am. St. Rep. 935, 53 Pac. 291. But see *Louisiana v. Police Jury*, 111 U. S. 721, 4 S. Ct. 648, 28 L. ed. 574, dictum; *Sawyer v. Vilas*, 19 Vt. 47.

¹⁸⁵ *Freeland v. Williams*, 131 U. S. 416, 9 S. Ct. 763, 33 L. ed. 193; *Winona etc. R. R. v. Plainview*, 143 U. S. 393, 12 S. Ct. 530, 36 L. ed. 191; *McAfee v. Covington*, 71 Ga. 272, 51 Am. Rep. 263; *Parker v. Savage*, 6 Lea, 406; *Louisiana v. New Orleans*, 32 La. Ann. 709; *Peerce v. Kitzmiller*, 19 W. Va. 564; *White v. Shanklin*, 19 W. Va. 583; *Dash v. Van Kleeck*, 7 Johns. 477, 5 Am. Dec. 291; *Amy v. Smith*, 1 Litt. 326; *Thayer v. Seavey*, 11 Me. 284.

¹⁸⁶ *Louisiana v. Mayor of New Orleans*, 109 U. S. 288, 3 S. Ct. 211, 27 L. ed. 936.

any of these essentials.¹⁸⁷ So where the law at the time a judgment is rendered prescribes a rate of interest which judgments shall bear, a law changing the rate is not void as applied to that judgment.¹⁸⁸ A judgment for the repayment of money paid by mistake for taxes is upon the same footing, and a judgment creditor cannot insist upon the maintenance of the rate of taxation in force when his judgment was rendered, until it is paid.¹⁸⁹ The repeal of a law giving a judgment creditor a lien has been held not to be in conflict with the prohibition,¹⁹⁰ but on the theory that the law giving a lien on the debtor's property to satisfy a judgment forms part of the contract, the contrary has been held in other cases.¹⁹¹ A statute requiring the recordation of abstracts of judgment applies to judgments rendered before its passage.¹⁹²

Marriage contracts are not within the prohibition and the legislature is not forbidden to pass laws regulating or annulling the marriage relation,¹⁹³ and may make that cause for divorce

¹⁸⁷ *Morley v. Lake Shore etc. Ry.*, 146 U. S. 169, 13 S. Ct. 54, 36 L. ed. 925.

¹⁸⁸ *Morley v. Lake Shore etc. Ry.*, 146 U. S. 169, 13 S. Ct. 54, 36 L. ed. 925; *Wyoming Nat. Bank v. Brown*, 7 Wyo. 494, 75 Am. St. Rep. 935, 53 Pac. 291.

¹⁸⁹ *State v. New Orleans*, 38 La. Ann. 119, 58 Am. Rep. 168.

¹⁹⁰ *Bank v. Longworth*, 1 McLean, 35, Fed. Cas. No. 923; *Iverson v. Shorter*, 9 Ala. 713; *Beck v. Burnett*, 22 Ala. 822; *Daily v. Burke*, 28 Ala. 328; *Curry v. Landers*, 35 Ala. 280; *Moore v. Holland*, 16 S. C. 24; *McCormick v. Alexander*, 2 Ohio, 285.

¹⁹¹ *Murphy v. Gaskins*, 28 Gratt. 207; *Ratliffe v. Anderson*, 31 Gratt. 105, 31 Am. Rep. 716; *Gilman v. Tucker*, 128 N. Y. 190, 26 Am. St. Rep. 464, 28 N. E. 1040, 13 L. R. A. 304; *Merchants' Bank v. Ballou*, 98 Va. 112, 81 Am. St. Rep. 715, 32 S. E. 481, 44 L. R. A. 306.

¹⁹² *Tarpey v. Hamer*, 17 Miss. 310.

¹⁹³ *Maynard v. Hill*, 125 U. S. 214, 8 S. Ct. 723, 30 L. ed. 654; *Hunt v. Hunt*, 131 U. S. clxv; *Starr v. Hamilton*, Deady, 268, Fed. Cas. No. 13,314; *Ex parte Kinney*, 3 Hughes, 9, Fed. Cas. No. 7825; *White v. White*, 5 Barb. 474; *Fultz v. Fox*, 9 B. Mon. 499; *Kelly v. McCarthy*, 3 Bradf. 7; *Noel v. Ewing*, 9 Ind. 37; *Jones' Appeal*, 57 Pa. St. 369; *State v. Duket*, 90 Wis. 277, 48 Am. St. Rep. 931, 63 N. W. 85, 31 L. R. A. 515.

which was not prescribed at the time a marriage was contracted.¹⁹⁴

A law repealing an act creating an office, removing the incumbent, and changing the rate of compensation does not impair the obligation of any contract.¹⁹⁵ Where, however, services have been rendered by an officer under a law fixing compensation, an implied contract to pay at that rate arises, which is impaired by a change in the constitution diminishing the taxing power and preventing the collection of the compensation due.¹⁹⁶

A state cannot prevent its citizens from making any contracts they please outside of the state;¹⁹⁷ nor can state laws operate upon the contracts of its citizens beyond the limits of the state.¹⁹⁸ An obligation derived from the laws of one state cannot be impaired by the laws of another, but one state need not give the same legal obligation to a contract as would the state where it was made.¹⁹⁹ So while the *lex loci contractus*, generally speaking, governs in determining the obligation of a contract,²⁰⁰ contracts *bonos mores*, or against the policy or laws

¹⁹⁴ *Elliott v. Elliott*, 38 Md. 362; *Jones v. Jones*, 2 Overt. 2; *Carson v. Carson*, 40 Miss. 349; *Hickman v. Hickman*, 1 Wash. 257, 22 Am. St. Rep. 148, 24 Pac. 445.

¹⁹⁵ *Butler v. Pennsylvania*, 10 How. 416, 13 L. ed. 472; *Perkins v. Corbin*, 45 Ala. 119, 6 Am. Rep. 702; *Lane v. Kolb*, 92 Ala. 641, 9 South. 874; *Oldham v. Birmingham*, 102 Ala. 366, 14 South. 795; *Humphrey v. Sadler*, 40 Ark. 102; *Standeford v. Wingate*, 2 Duvall, 445; *State v. Davis*, 44 Mo. 131; *Kenney v. Hudspeth*, 59 N. J. L. 322, 36 Atl. 662; *Jones v. Hobbs*, 4 Baxt. 120; *State v. Pinkerman*, 63 Conn. 196, 28 Atl. 117, 22 L. R. A. 653; *Augusta v. Sweeney*, 44 Ga. 465, 9 Am. Rep. 173.

¹⁹⁶ *Fisk v. Jefferson Police Jury*, 116 U. S. 134, 6 S. Ct. 330, 29 L. ed. 587.

¹⁹⁷ *Lamb v. Bowser*, 7 Bias, 315, 372, Fed. Cas. Nos. 8008, 8009.

¹⁹⁸ *Ogden v. Saunders*, 12 Wheat. 369, 6 L. ed. 606; *Boyle v. Zacharie*, 6 Pet. 348, 8 L. ed. 423, 6 Pet. 643, 8 L. ed. 527; *Babcock v. Weston*, 1 Gall. 169, Fed. Cas. No. 703; *Agnew v. Platt*, 15 Pick. 420; *Glenn v. Clabaugh*, 65 Md. 69, 3 Atl. 904; *Larrabee v. Talbott*, 5 Gill, 438, 46 Am. Dec. 642; *Easterly v. Goodwin*, 35 Conn. 284, 95 Am. Dec. 238; *Hawley v. Hunt*, 27 Iowa, 307, 1 Am. Rep. 274.

¹⁹⁹ *Lapsley v. Brashear*, 4 Litt. 47.

²⁰⁰ *Robinson v. Campbell*, 3 Wheat. 219, 4 L. ed. 372; *Wayman v. Southard*, 10 Wheat. 48, 6 L. ed. 253; *Andrews v. Pond*, 13 Pet. 78,

of a state, will not be enforced in its courts notwithstanding it may have been lawful in the state where it was entered into.²⁰¹

— Contracts of States.

In its broadest sense "contracts" includes agreements or compacts between the government and its citizens,²⁰² and a contract between a state and an individual, as well as between two individuals, is fully protected by the constitution.²⁰³ States entering into contracts do so upon the same footing as ordinary individuals, and they cannot invoke their sovereign attributes to justify an impairment of their contracts.²⁰⁴ A state legislature may contract with an individual, and its enactments to that end become contracts within the prohibition.²⁰⁵

10 L. ed. 61; *Bank of Augusta v. Earle*, 13 Pet. 589, 10 L. ed. 274; *Pritchard v. Norton*, 106 U. S. 137, 1 S. Ct. 102, 27 L. ed. 104; *Mutual Life Ins. Co. v. Cohen*, 179 U. S. 264, 21 S. Ct. 106, 45 L. ed. 181.

²⁰¹ *Smith v. Union Bank*, 5 Pet. 527, 8 L. ed. 212; *Teal v. Walker*, 111 U. S. 252, 4 S. Ct. 420, 28 L. ed. 415; *Herschfeld v. Dexel*, 12 Ga. 586; *Varnum v. Camp*, 13 N. J. L. 332, 25 Am. Dec. 482; *Flagg v. Baldwin*, 38 N. J. Eq. 224, 48 Am. Rep. 312.

²⁰² *United States v. Stockechlager*, 129 U. S. 477, 9 S. Ct. 384, 32 L. ed. 785; *Bruce v. Schuyler*, 4 Gilm. 278, 46 Am. Dec. 460; *Trustees v. Rider*, 13 Conn. 96; *Winter v. Jones*, 10 Ga. 196, 54 Am. Dec. 382; *Cary Library v. Bliss*, 151 Mass. 375, 25 N. E. 94, 7 L. R. A. 765; *Swan v. Buck*, 40 Miss. 268.

²⁰³ *Providence Bank v. Billings*, 4 Pet. 560, 7 L. ed. 939; *Poin-dexter v. Greenhow*, 114 U. S. 286, 5 S. Ct. 912, 29 L. ed. 185; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 673, 6 S. Ct. 264, 29 L. ed. 516; *Sala v. New Orleans*, 2 Woods, 194, Fed. Cas. No. 12,246; *McCauley v. Brooks*, 16 Cal. 30.

²⁰⁴ *Piqua Branch Bank v. Knoop*, 16 How. 389, 14 L. ed. 977; *Murray v. Charleston*, 90 U. S. 445, 24 L. ed. 760; *Hartman v. Greenhow*, 103 U. S. 679, 26 L. ed. 271; *Wolff v. New Orleans*, 103 U. S. 367, 26 L. ed. 395; *Tennessee etc. R. R. v. Moore*, 36 Ala. 386; *Redlon v. Barker*, 4 Kan. 387, 96 Am. Dec. 179; *Robertson v. Land Commissioner*, 44 Mich. 278, 6 N. W. 661.

²⁰⁵ *New Jersey v. Yard*, 95 U. S. 114, 24 L. 352; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 660, 6 S. Ct. 257, 29 L. ed. 516; *People v. Hall*, 8 Colo. 492, 9 Pac. 37; *Winter v. Jones*, 10 Ga. 190, 54 Am. Dec. 379; *Trustees v. Bailey*, 10 Fla. 112; *Canal Co. v. Railroad Co.*, 4 Gill & J. 1.

The rule that one legislature cannot bind its successors does not prevent the enactment of laws in the nature of contracts which a subsequent legislature cannot repeal;²⁰⁶ but the details of a contract with the state may be altered where the alteration does not impair the obligation.²⁰⁷ A grant by the United States to a state upon condition, and the acceptance thereof by the state, constitutes a contract which cannot be impaired by the legislature.²⁰⁸

General laws are not contracts, but only the expression of the legislative will, and laws which amend or repeal them are not within the inhibition;²⁰⁹ e. g., general regulations for the descent and distribution of property.²¹⁰ And a contract for the sale of a dam is not impaired by a general law requiring the construction of fishways over all dams.²¹¹ Nor does the prohibition apply to legislation in matters of purely legislative con-

²⁰⁶ *Piqua Branch Bank v. Knoop*, 16 How. 389, 14 L. ed. 977; *Ohio Life Ins. etc. Co. v. Debolt*, 16 How. 416, 14 L. ed. 997; *Mechanics' Bank v. Debolt*, 18 How. 380, 15 L. ed. 458; *Jefferson Bank v. Skelley*, 1 Black, 436, 17 L. ed. 173; *Murray v. Charleston*, 95 U. S. 445, 24 L. ed. 760; *Hartman v. Greenhow*, 102 U. S. 679, 26 L. ed. 271; *Hall v. Wisconsin*, 103 U. S. 8, 26 L. ed. 302; *Von Hoffman v. Quincy*, 4 Wall. 554, 18 L. ed. 403; *Tennessee etc. R. R. v. Moore*, 36 Ala. 386; *Winona etc. R. R. v. County of Deuel*, 3 Dak. Ter. 13, 12 N. W. 564; *State of Georgia v. Georgia etc. Co.*, 54 Ga. 426; *Daughdrill v. Life Ins. Co.*, 31 Ala. 91; *State v. County Court*, 19 Ark. 360; *Johnson v. Commonwealth*, 7 Dana, 338; *State v. Bank*, 2 Houst. 99, 73 Am. Dec. 699; *Illinois Cent. R. R. v. McLean County*, 17 Ill. 291; *State Bank v. People*, 5 Ill. 303; *Bank v. New Albany*, 11 Ind. 139; *Bank v. Edwards*, 5 Ired. 516; *Bank v. Deming*, 7 Ired. 55; *Carr v. State*, 127 Ind. 207, 22 Am. St. Rep. 626, 26 N. E. 779, 11 L. R. A. 370; *Municipality v. State Bank*, 5 La. Ann. 394; *People v. Auditor*, 7 Mich. 84; *Camden etc. R. R. v. Commissioners*, 18 N. J. 71; *State v. Young*, 29 Minn. 530, 9 N. W. 742; *Matheny v. Golden*, 5 Ohio St. 361; *Canal Company's Case*, 83 Md. 326, 35 Atl. 365.

²⁰⁷ *Thornton v. Hooper*, 14 Cal. 9.

²⁰⁸ *McGee v. Mathis*, 4 Wall. 155, 18 L. ed. 314; *Trustees v. St. Johns R. R.*, 16 Fla. 542.

²⁰⁹ *Corning v. Greene*, 23 Barb. 33; *State v. Dews*, R. M. Charl. 397; *People v. Roper*, 35 N. Y. 629.

²¹⁰ *In re Lawrence*, 5 N. Y. Supp. 310.

²¹¹ *State v. Meek*, 112 Iowa, 386, 84 Am. St. Rep. 342, 84 N. W. 3, 51 L. R. A. 414.

cern, or involving the exercise of general political powers.²¹² Of this nature are laws creating public offices and conferring powers upon municipal corporations.²¹³

An appointment to a public office is not a contract,²¹⁴ and the compensation of an officer fixed by law may be reduced in the absence of prohibition in the state constitution;²¹⁵ or the office may be abolished and the incumbent removed;²¹⁶ or additional duties may be attached to an office without increasing the compensation.²¹⁷

An officer of a public corporation is a public officer within

²¹² *Commonwealth v. Bird*, 12 Mass. 443; *People v. Roper*, 35 N. Y. 629; *Essex v. Spaulding*, 17 Nev. 289.

²¹³ *Butler v. Pennsylvania*, 10 How. 416, 13 L. ed. 472.

²¹⁴ *Butler v. Pennsylvania*, 10 How. 416, 13 L. ed. 472; *Barker v. Pittsburgh*, 4 Pa. St. 49; *Commonwealth v. Bacon*, 6 Serg. & R. 322; *Jones v. Shaw*, 15 Tex. 577; *Commonwealth v. Mann*, 5 Watts & S. 418; *Benford v. Gibson*, 15 Ala. 521; *Coffin v. State*, 7 Ind. 157; *Haynes v. State*, 3 Humph. 480, 39 Am. Dec. 187; *Swan v. Buck*, 40 Miss. 258; *State v. Smedes*, 26 Miss. 47; *Connor v. New York*, 2 Sand. 355; *State v. Dewa*, R. M. Charlt. 397; *People v. Lippincott*, 67 Ill. 333; *Humphrey v. Sadler*, 40 Ark. 102; *Standeford v. Wingate*, 2 Duvall, 445; *Sargent v. Wilder*, 71 Me. 383; *Kenny v. Hudspeth*, 59 N. J. L. 322, 36 Atl. 662; *Jones v. Hobbs*, 4 Baxt. 120.

²¹⁵ *Farwell v. Rockland*, 62 Me. 300; *Wyandotte v. Drennan*, 40 Mich. 480, 9 N. W. 501; *Knoppen v. Supervisors*, 46 Mich. 24, 8 N. W. 580; *Lloyd v. Silver Bow County*, 11 Mont. 411, 28 Pac. 454; *Douglas County v. Timme*, 32 Neb. 275, 49 N. W. 267; *Marden v. Portsmouth*, 59 N. H. 20; *Warner v. People*, 2 Denio, 272, 43 Am. Dec. 740; *McCormick v. Fayette County*, 150 Pa. St. 193, 24 Atl. 668, *McFall v. Austin*, 1 Tex. App. Civ. 207; *Loving v. Auditor*, 76 Va. 947; *Holladay v. Auditor*, 77 Va. 430; *State v. Kalb*, 50 Wis. 183, 6 N. W. 588; *Bedford v. Gibson*, 15 Ala. 521; *People v. Auditor*, 2 Ill. 537; *Barker v. Pittsburgh*, 4 Pa. St. 49; *Connor v. New York*, 2 Sand. Ch. 355; *Knoop v. Piqua Branch Bank*, 1 Ohio St. 616; *Toledo Bank v. Bond*, 1 Ohio St. 655; *Kilgore v. Magee*, 85 Pa. St. 401.

²¹⁶ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 694, 4 L. ed. 629; *Butler v. Pennsylvania*, 10 How. 416, 13 L. ed. 472; *State v. Dewa*, R. M. Charlt. 414; *People v. Loeffler*, 175 Ill. 609, 51 N. E. 793; *Demarest v. Mayor*, 74 N. Y. 166; *People v. Pickney*, 32 N. Y. 395; *Coyle v. McIntyre*, 7 Houst. 44, 40 Am. St. Rep. 114, 30 Atl. 730; *Donohue v. County of Will*, 100 Ill. 106.

²¹⁷ *Turpen v. Commissioners*, 7 Ind. 172, *Prairie v. Worth*, 78 N. C. 173.

this rule.²¹⁸ So a professor in a state university elected for a specified term "subject to law" may be removed by subsequent action of the legislature before the expiration of his term.²¹⁹

To bring contracts with a state within the prohibition, consideration is essential.²²⁰ Accordingly the legislature may repeal an act which, when passed, was a mere gratuity if no vested rights have been acquired under or by virtue of it.²²¹ A statute providing for compensation for property destroyed to check fire is in the nature of a gratuity, and may be repealed,²²² and a statute offering a bounty is not a contract except as to those who earn the bounty while the statute is in force.²²³ Nor is a statute granting an annuity for services already rendered, and as to which the state has no further obligation, a contract;²²⁴ but where a statute provides for an annuity to be paid to a college corporation about to be organized, in order to encourage subscriptions, a contract arises between the state and the corporation which cannot be impaired by subsequent legislation;²²⁵ so also where a state offers assistance to a commercial corporation upon consideration of a contribution of a certain amount on each share of stock, the acceptance by the stockholders and the contribution of the sum specified creates a contract within the prohibition.²²⁶

— Legislative Grants.

A legislative grant, although in the form of a statute, is a

²¹⁸ *Augusta v. Sweeny*, 44 Ga. 463, 9 Am. Rep. 172; *Iowa City v. Foster*, 10 Iowa, 189; *Commonwealth v. Bacon*, 6 Serg. & R. 322.

²¹⁹ *Head v. University*, 19 Wall. 531, 22 L. ed. 160; *Gillan v. Board of Regents*, 88 Wis. 13, 58 N. W. 1044, 24 L. R. A. 336.

²²⁰ *Ohio Trust Co. v. Debolt*, 16 How. 416, 14 L. ed. 997.

²²¹ *Memphis v. United States*, 97 U. S. 297, 24 L. ed. 920; *Hess v. Muir*, 65 Md. 605, 6 Atl. 676.

²²² *Bowditch v. Boston*, 101 U. S. 19, 25 L. ed. 980.

²²³ *Salt Co. v. East Saginaw*, 13 Wall. 377, 20 L. ed. 611; *Shiner v. Jacobs*, 62 Iowa, 394, 17 N. W. 613; *Commissioners v. Hudson*, 29 Kan. 75; *Cushman v. Hale*, 68 Vt. 452, 35 Atl. 385.

²²⁴ *Dale v. State*, 3 Stew. 387.

²²⁵ *St. John's College v. State*, 15 Md. 330.

²²⁶ *Consolidated Assn. of Planters v. Lord*, 35 La. Ann. 425.

contract within this clause,²²⁷ whether made directly, or indirectly through a municipal corporation,²²⁸ and a statute repealing a prior grant is void.²²⁹ The prohibition extends to all legislation whereby the estate granted will be in anywise impaired.²³⁰

An executed grant is impaired by a law operating to divest any right or estate vested under it,²³¹ and any attempt to destroy such vested rights is unconstitutional and void;²³² e. g., an act attempting to take property from the grantee and confer it upon another,²³³ or an act annulling former grants and declaring that the grantors shall stand seised of their former estates.²³⁴ A subsequent statute imposing conditions not con-

²²⁷ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *Terrett v. Taylor*, 3 Cr. 50, 3 L. ed. 650; *Pawlet v. Clark*, 9 Cr. 332, 3 L. ed. 735; *Trustees Dartmouth College v. Woodward*, 4 Wheat. 656, 682, 4 L. ed. 629; *Pennyoy v. McConnaughy*, 140 U. S. 25, 11 S. Ct. 699, 35 L. ed. 363; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 9, 19 S. Ct. 77, 43 L. ed. 341; *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 9 L. ed. 773; *Grogan v. City of San Francisco*, 18 Cal. 590; *Bruce v. Schuyler*, 4 Gilh. 221, 46 Am. Dec. 447; *United States v. Minnesota etc. Ry.*, 1 Minn. 127; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340; *Montgomery v. Kasson*, 16 Cal. 194; *Savannah v. Steamboat Co.*, Charl. (Ga.) 346; *Winter v. Jones*, 10 Ga. 196, 54 Am. Dec. 382; *Edwards v. Jagers*, 19 Ind. 417; *Yarmouth v. North Yarmouth*, 34 Me. 418, 56 Am. Dec. 670; *Grammar School v. Bailey*, 62 Vt. 478, 20 Atl. 823.

²²⁸ *Baltimore Trust etc. Co. v. City of Baltimore*, 64 Fed. 153.

²²⁹ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *Rice v. Railroad Co.*, 1 Black, 358, 17 L. ed. 147; *Gaines v. Buford*, 1 Dana, 481; *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362; *Orenshaw v. State River Co.*, 6 Rand. 245.

²³⁰ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362.

²³¹ *Philadelphia etc. R. R. v. Bowers*, 4 Houst. 506.

²³² *United States v. Louisville etc. Canal Co.*, 4 Dill. 611, 1 Flip. 260, Fed. Cas. No. 15,633.

²³³ *Davis v. Gray*, 16 Wall. 203, 21 L. ed. 447; *Commissioners v. Lucas*, 93 U. S. 114, 23 L. ed. 822; *Stanmire v. Taylor*, 3 Jones (N. C.), 207.

²³⁴ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *Terrett v. Taylor*, 3 Cr. 50, 3 L. ed. 650; *Montgomery v. Kasson*, 16 Cal. 189; *Grogan v. City of San Francisco*, 18 Cal. 590; *Berrett v. Oliver*, 7 Gill & J. 191.

tained in the original grant impairs the obligation of the grant and is void,²³⁵ and the legislature cannot by subsequent act, provide a different mode of perpetuating a trust in lands granted.²³⁶

All acts impairing the rights of a grantee vested under a patent from the state are unconstitutional and void,²³⁷ but an act appointing commissioners to investigate titles to land held under state patents and determine their validity does not impair any contract obligation.²³⁸ On the other hand, the legislature cannot rescind a grant of land, which has passed into innocent hands, on the ground that the original patent was procured by fraud.²³⁹ Property purchased by an alien under a special act cannot be divested and transferred to another by legislative action;²⁴⁰ and it would seem that the legislature cannot vacate or set aside, on account of invalidity, patents granted prior to the Revolution.²⁴¹ An act granting land to a railroad company constitutes a contract between the state and the company acting under it,²⁴² and an act reappropriating the same land to any other purpose is void as impairing the obligation of the contract.²⁴³ The compact of 1789 between Virginia and Kentucky constituted a contract, and any act of either state impairing titles protected by that compact violates its obligation and is void; e. g., a law restricting the rights of a claimant as against an occupant.²⁴⁴

²³⁵ *Gaines v. Buford*, 1 Dana, 481; *Drew v. New York etc. Ry.*, 81 Pa. St. 46; *Herrick v. Randolph*, 13 Vt. 525.

²³⁶ *Fletcher v. Rutland etc. R. R.*, 39 Vt. 535.

²³⁷ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162; *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362.

²³⁸ *Jackson v. Lamphire*, 3 Pet. 289, 7 L. ed. 679.

²³⁹ *Fletcher v. Peck*, 6 Cr. 137, 3 L. ed. 162.

²⁴⁰ *Bonaparte v. Camden etc. Co.*, Baldw. 205, Fed. Cas. No. 1617.

²⁴¹ *People v. Clarke*, 9 N. Y. 349.

²⁴² *Davis v. Gray*, 16 Wall. 232, 21 L. ed. 447; *Pearsall v. Great Northern Ry.*, 161 U. S. 662, 16 S. Ct. 708, 40 L. ed. 838; *Preston v. Walsh*, 10 Fed. 325, 328; *Houston etc. Ry. v. Texas etc. Ry.*, 70 Tex. 657, 8 S. W. 500.

²⁴³ *Koenig v. Omaha etc. Ry.*, 3 Neb. 373.

²⁴⁴ *Green v. Biddle*, 8 Wheat. 108, 5 L. ed. 547.

A grant of the right to purchase state lands is a contract protected from impairment by subsequent act,²⁴⁵ and if a party by payment of the purchase money becomes entitled to a conveyance from the state, the legislature cannot by subsequent act deprive him of that right,²⁴⁶ and where other conditions have been complied with, the privilege of paying for the land and having a patent issued cannot be taken away.²⁴⁷ So, also, a certificate of purchase of swamp and overflowed lands, which binds the state to issue a patent to the purchaser or to the last assignee of the certificate, without any restriction as to the character of the assignee, cannot be impaired by a constitutional provision forbidding grants to any but citizens and actual settlers.²⁴⁸ The holder of a certificate may be required to establish the genuineness of his certificate in order to entitle him to survey and patent; e. g., a requirement that the certificate be presented to commissioners for approval within a certain time;²⁴⁹ but the conditions as to the time of making part payments cannot be changed so as to shorten the time and defeat rights acquired.²⁵⁰ Where, however, the contract is wholly executory it creates no obligation which is impaired by subsequent legislation,²⁵¹ and an act repealing a statute which confirmed certain titles upon the compliance of specified conditions precedent is not invalid where the conditions have not been complied with.²⁵² A statute allowing a bona fide occupant of land claimed by another under grant from the state does not impair the obligation of the contract between the state and its purchaser.²⁵³

²⁴⁵ *United States v. Great Falls Mfg. Co.*, 21 Md. 119.

²⁴⁶ *Winter v. Jones*, 10 Ga. 190, 54 Am. Dec. 379; *Fogg v. Williams*, 2 Head, 474.

²⁴⁷ *Damman v. Commissioners*, 4 Wis. 414; *Montgomery v. Kasson*, 10 Cal. 189.

²⁴⁸ *McCabe v. Goodwin*, 106 Cal. 486, 39 Pac. 941.

²⁴⁹ *League v. De Young*, 11 How. 202, 13 L. ed. 657; *Hamilton v. Avery*, 20 Tex. 634; *Peck v. Moody*, 23 Tex. 95; *Durrett v. Crosby*, 28 Tex. 695.

²⁵⁰ *Pennoyer v. McConnaughy*, 140 U. S. 1, 11 S. Ct. 669, 35 L. ed. 363.

²⁵¹ *Trustees v. Rider*, 13 Conn. 87; *Swan v. Buck*, 40 Miss. 268.

²⁵² *Van Horne v. Dorrance*, 2 Dall. 304, Fed. Cas. No. 16,857.

²⁵³ *Albee v. May*, 2 Paine, 74, Fed. Cas. No. 134; *Armstrong v.*

Grants of land including water rights are within the prohibition; and where land was granted on both sides of a non-navigable stream with no restriction as to the use of the stream, a subsequent statute requiring the grantee to change his dams was declared to be void;²⁵⁴ and where a dam was erected under an act of the legislature authorizing the reclamation of wet lands, a subsequent act requiring the removal of the dam is void.²⁵⁵ The grant to a purchaser of water lots of the right to construct a wharf, or to extend his lots to prescribed limits, cannot be revoked by the state;²⁵⁶ but the grant of a privilege to erect a wharf is not impaired by another grant to a county to erect a wharf in close proximity to it, although the value of the privilege is thereby diminished.²⁵⁷ Nor does the grant of water lots give to the owners of such lots any absolute right in clam or oyster fisheries within their limits, free from legislative regulation for the preservation of the common property in such shell fish.²⁵⁸ The provision in the California statute of 1851, as to the boundary of water lots in San Francisco harbor created no contract between the state and the grantees under that act.²⁵⁹ A statute providing for the reclamation of swamp lands and for an assessment upon the owners proportionate to the benefits accruing, impairs no contract contained in United States or Mexican land grants;²⁶⁰ nor does the grant of a portion of submerged lands preclude the improvement of the remainder by the state.²⁶¹

Jackson, 1 Blackf. 210, 12 Am. Dec. 225; *Scott v. Mather*, 14 Tex. 236; *Saunders v. Wilson*, 19 Tex. 196. But see *Bristoe v. Evans*, 2 Overt. 341; *Nelson v. Allen*, 1 Yerg. 360.

²⁵⁴ *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362; *State v. Glenn*, 7 Jones (N. C.), 321; *Cornelius v. Glenn*, 7 Jones (N. C.), 512. But see *State v. Meek*, 112 Iowa, 388, 84 Am. St. Rep. 342, 84 N. W. 3, 51 L. R. A. 414.

²⁵⁵ *Glover v. Powell*, 10 N. J. Eq. 211.

²⁵⁶ *Baltimore & Ohio R. R. v. Chase*, 43 Md. 23.

²⁵⁷ *Lansing v. Smith*, 4 Wend. 9, 21 Am. Dec. 89.

²⁵⁸ *Commonwealth v. Bailey*, 13 Allen, 541.

²⁵⁹ *Floyd v. Blanding*, 54 Cal. 41.

²⁶⁰ *Hagar v. Reclamation Dist. No. 108*, 111 U. S. 701, 4 S. Ct. 663, 28 L. ed. 569, affirming 6 Saw. 567, 4 Fed. 366; S. C., 66 Cal. 54, 4 Pac. 945.

²⁶¹ *Holister v. Union County*, 9 Conn. 436, 25 Am. Dec. 36; *Lansing v. Smith*, 8 Cow. 146.

A lease of school lands providing for the reappraisal of the value of the lands at stated periods, and giving the lessee the right to select one of the three appraisers, is a contract which cannot be impaired by depriving the lessee of his right of selection.²⁶² The contract in a lease of a railway, two-thirds of whose stock is owned by the state, which gives the lessee the right to change the gauge of the road, is impaired by a statute prohibiting any change of gauge.²⁶³ The legislature has power to authorize a corporation created by it to borrow money by mortgaging its property and franchises or by issuing preferred stock and pledging its revenues to pay dividends thereon,²⁶⁴ and having done so, the state is estopped from impeaching the corporation's action and rights acquired thereunder cannot be impaired by legislative action.²⁶⁵ The contract implied in a grant of an undivided half interest in escheated property is not impaired by the release to another of "whatever interest in such land might rightfully belong to the state."²⁶⁶ But where the legislature has granted to the state university all escheated property, it cannot, by subsequent act, repeal the grant and provide that all such property shall revert to the state.²⁶⁷ A statute providing for escheat proceedings after actual notice to known claimants and constructive notice to unknown claimants does not impair the obligation of any contract in the grant under which the deceased owner held.²⁶⁸

— Licenses.

A license granted by a state or a municipal corporation is not a contract within the meaning of this prohibition; it is merely the grant of a privilege which may be revoked or may have additional conditions imposed upon its enjoyment, unless otherwise

²⁶² *State v. McPeak*, 31 Neb. 139, 47 N. W. 691; *State v. Thayer*, 46 Neb. 137, 64 N. W. 700.

²⁶³ *State v. Richmond etc. Ry. Co.*, 73 N. C. 527.

²⁶⁴ *Covington v. Covington etc. Br. Co.*, 10 Bush (Ky.), 69.

²⁶⁵ *Mower v. Kemp*, 42 La. Ann. 1007, 8 South. 830.

²⁶⁶ *Mulligan v. Corbins*, 7 Wall. 491, 19 L. ed. 222.

²⁶⁷ *Den v. Foy*, 1 Murph. (N. C.) 58.

²⁶⁸ *Hamilton v. Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. ed. 691.

provided in the state constitution.²⁶⁹ A license to practice law is not a contract; accordingly an act declaring a forfeiture of the right is not repugnant to this prohibition;²⁷⁰ and a state may require attorneys at law to file affidavits of allegiance in order to continue to practice.²⁷¹ The license to practice any profession may be modified in any manner which the public welfare may demand, and a tax on the license is not unconstitutional.²⁷²

The certificate issued to a foreign corporation authorizing it to do business does not constitute a contract which will preclude subsequent license taxation by a state.²⁷³ A right given by statute to purchasers of railroad property and franchises at foreclosure sale to form a new corporation with all the rights and privileges of the old one upon complying with certain prerequisites, is a mere regulation of law, and a subsequent act imposing new conditions precedent to the obtaining of a charter is unobjectionable.²⁷⁴ An act increasing the license fee to be paid by foreign corporations then doing business, or thereafter to be authorized, is likewise valid.²⁷⁵

²⁶⁹ *Phalen v. Virginia*, 8 How. 168, 12 L. ed. 1030, 3 Harr. 441; *Calder v. Kurby*, 5 Gray, 597; *Adams v. Hackett*, 27 N. H. 289, 59 Am. Dec. 376; *Simmons v. State*, 12 Mo. 268, 49 Am. Dec. 131; *City of St. Louis v. Sternberg*, 69 Mo. 289; *Hirn v. Ohio*, 1 Ohio St. 21; *Metropolitan Board of Excise v. Barrie*, 7 Tiff. 667; *Bass v. Mayor, Meigs*, 421, 33 Am. Dec. 154; *Gregory v. Shelby*, 2 Met. (Ky.) 589; *Freligh v. State*, 8 Mo. 606; *State v. Sterling*, 8 Mo. 607; *State v. Hawthorn*, 9 Mo. 389.

²⁷⁰ *In re Baxter*, Fed. Cas. No. 1118.

²⁷¹ *Cohen v. Wright*, 22 Cal. 293.

²⁷² *First Municipality v. Manuel*, 4 La. Ann. 328; *City of New Orleans v. Turpin*, 13 La. Ann. 56; *State v. Fellowes*, 12 La. Ann. 344; *State v. Waples*, 12 La. Ann. 343; *Simmons v. State*, 12 Mo. 268, 49 Am. Dec. 131; *State v. Gozlay*, 5 Ohio, 14; *Drexel v. Commonwealth*, 46 Pa. St. 31.

²⁷³ *Home Ins. Co. v. Augusta*, 93 U. S. 122, 123, 23 L. ed. 325; *Postal Tel. Co. v. Charleston*, 153 U. S. 695, 14 S. Ct. 1095, 38 L. ed. 871, affirming 56 Fed. 421.

²⁷⁴ *People v. Cook*, 148 U. S. 397, 13 S. Ct. 645, 37 L. ed. 498, affirming 110 N. Y. 443, 18 N. E. 113.

²⁷⁵ *Aetna Standard etc. Co. v. Taylor*, 4 Ohio Dec. 180, 3 Ohio, N. P. 152.

Where the privilege becomes an absolute contract it is within the protection accorded by this clause, and its obligation cannot be impaired.²⁷⁶ So where a person under a permit granted by a city council to erect frame buildings within the fire limits has made contracts and incurred liabilities thereon before a rescission of the privilege, he has acquired a contractual right which is entitled to protection,²⁷⁷ and it seems that the payment of a bonus for a privilege granted confers a right which cannot be impaired by subsequent legislation.²⁷⁸

A license to tolerate certain acts or authorizing certain acts cannot deprive the state of power to revoke the privilege whenever the public welfare demands the revocation; accordingly a license to maintain a dam in a navigable river may be modified or revoked whenever the necessities of navigation require.²⁷⁹ Licenses to maintain slaughter-houses may be revoked whenever the exercise of the right under them become a nuisance.²⁸⁰ Neither the legislature nor the people themselves can bargain away the right to regulate the public health or morals, or legislative discretion concerning them; accordingly the privilege of conducting a lottery must be held subject to the state's police power.²⁸¹ Licenses to manufacture and sell liquor are upon the same footing, and they may be repealed at any time, notwithstanding they are granted in unqualified terms.²⁸² The pre-

²⁷⁶ *State Lottery Co. v. Fitzpatrick*, 3 Woods, 222, Fed. Cas. No. 8541.

²⁷⁷ *City of Buffalo v. Chadeayne*, 134 N. Y. 163, 31 N. E. 443.

²⁷⁸ *Wendover v. Lexington*, 15 B. Mon. 258.

²⁷⁹ *Rundle v. Canal Co.*, 14 How. 89, 14 L. ed. 335; *State v. Beardsley*, 108 Iowa, 405, 79 N. W. 141.

²⁸⁰ *Crescent City Co. v. New Orleans*, 33 La. Ann. 934; *Portland v. Meyer*, 32 Or. 371, 67 Am. St. Rep. 540, 52 Pac. 22.

²⁸¹ *Stone v. Mississippi*, 101 U. S. 819, 25 L. ed. 1079; *Douglas v. Kentucky*, 168 U. S. 496, 18 S. Ct. 201, 42 L. ed. 553.

²⁸² *Boston Beer Co. v. Massachusetts*, 97 U. S. 32, 33, 24 L. ed. 989; *Kresser v. Lyman*, 74 Fed. 767; *Powell v. State*, 69 Ala. 10; *Hevren v. Reed*, 126 Cal. 222, 58 Pac. 537; *La Croix v. County Commissioners*, 49 Conn. 602, 50 Conn. 329, 47 Am. Rep. 652; *Brown v. State*, 82 Ga. 225, 7 S. E. 916; *McKinney v. Salem*, 77 Ind. 214; *Moore v. Indianapolis*, 120 Ind. 492, 22 N. E. 427; *Columbus City v. Cutcomp*, 61 Iowa, 672, 17 N. W. 47; *State v. Bott*, 31 La. Ann. 663, 33 Am. Rep. 224; *Fell v. State*, 42 Md. 71, 20 Am. Rep. 83; *Metro-*

payment of the license tax does not affect this power,²⁸³ and before the end of the fiscal year the legislature may raise the fee for the unexpired term.²⁸⁴ Such a license not being a contract, a law making a dealer in liquors liable for injury caused by an intoxicated person is not unconstitutional as impairing the obligation of a contract.²⁸⁵

— Exemption from Taxation.*

Unless restrained by the state constitution the legislature may contract to exempt property from taxation so as to bind its successors.²⁸⁶ Such exemption is always a question of policy, never one of power,²⁸⁷ and a state in granting it relinquishes no part of its sovereign powers.²⁸⁸ But the state's right to tax can be relinquished only by express stipulation;²⁸⁹ the *in-
politan Board of Excise v. Barrie*, 34 N. Y. 657; *Young v. Blaisdell*, 138 Mass. 345.

²⁸³ *Reithmiller v. People*, 44 Mich. 285, 6 N. W. 669.

²⁸⁴ *Moore v. City of Indianapolis*, 120 Ind. 483, 22 N. E. 424; *Rowland v. State*, 12 Tex. App. 418.

²⁸⁵ *Moran v. Goodman*, 130 Mass. 158, 39 Am. Rep. 443; *Baker v. Pope*, 2 Hun, 556; *Franklin v. Schormerborn*, 8 Hun, 112.

²⁸⁶ *New Jersey v. Wilson*, 7 Cr. 167, 3 L. ed. 303; *Ohio etc. Trust Co. v. Debolt*, 16 How. 428, 14 L. ed. 997; *Dodge v. Woolsey*, 18 How. 331, 15 L. ed. 401; *Wilmington R. R. v. Reid*, 13 Wall. 287, 20 L. ed. 568; *Von Hoffman v. Quincy*, 4 Wall. 525, 18 L. ed. 403; *Jefferson Br. Bank v. Skelly*, 1 Black, 447, 17 L. ed. 173; *Tomlinson v. Jessup*, 15 Wall. 454, 21 L. ed. 189; *Tomlinson v. Branch*, 15 Wall. 468, 21 L. ed. 189; *Pacific R. R. v. Maguire*, 20 Wall. 43, 22 L. ed. 282; *The Delaware R. R. Tax*, 18 Wall. 225, 21 L. ed. 888; *Bailey v. Maguire*, 22 Wall. 226, 22 L. ed. 850; *Tucker v. Ferguson*, 22 Wall. 575, 22 L. ed. 805; *Salt Co. v. East Saginaw*, 13 Wall. 376, 20 L. ed. 611; *Mobile etc. R. R. v. Tennessee*, 153 U. S. 500, 14 S. Ct. 968, 38 L. ed. 793; *Memphis City Bank v. Tennessee*, 161 U. S. 190, 16 S. Ct. 463, 40 L. ed. 664.

²⁸⁷ *Piqua Branch Bank v. Ohio*, 16 How. 384, 14 L. ed. 977.

²⁸⁸ *Piqua Branch Bank v. Ohio*, 16 How. 384, 14 L. ed. 977; *Wells v. Central Vermont R. R.*, 14 Blatchf. 430, Fed. Cas. No. 17,390; *State v. Bank of Smyrna*, 2 Houst. 116, 73 Am. Dec. 701.

²⁸⁹ *Providence Bank v. Billings*, 4 Pet. 561, 7 L. ed. 939; *Philadelphia & Wilmington R. R. v. Maryland*, 10 How. 393, 13 L. ed. 461;

*Exemptions in corporate charters, see post, pp. 347-356.

tention to grant the exemption must be clear,²⁹⁰ and be indicated by unmistakable words.²⁹¹ The power is necessary to the existence of a state and all acts limiting it must be strictly construed,²⁹² and the question of legislative intent is always open.²⁹³

If the exemption is a mere gratuity, is spontaneous, and no service or duty or other condition is imposed, it may be withdrawn at any time.²⁹⁴ So a statute exempting the property of a manufacturing corporation from taxation for a period of

Tomlinson v. Branch, 15 Wall. 460, 21 L. ed. 189; *Tomlinson v. Jessup*, 15 Wall. 454, 21 L. ed. 189; *Charles River Bridge v. Warren Bridge*, 11 Pet. 546, 9 L. ed. 773; *Tucker v. Ferguson*, 22 Wall. 527, 22 L. ed. 805; *West Wisconsin R. R. v. Supervisors*, 93 U. S. 598, 23 L. ed. 814; *Newton v. Commissioners*, 100 U. S. 561, 25 L. ed. 710; *Memphis Gas Co. v. Shelby County*, 109 U. S. 401, 3 S. Ct. 206, 27 L. ed. 976; *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 84, 10 S. Ct. 37, 33 L. ed. 267.

²⁹⁰ *Gilman v. Sheboygan*, 2 Black, 513, 17 L. ed. 305; *Rector etc. v. Philadelphia Co.*, 24 How. 302, 16 L. ed. 602; *Railroad Co. v. Gaines*, 97 U. S. 708, 24 L. ed. 1091; *Railroad Co. v. Loftin*, 98 U. S. 564, 25 L. ed. 222; *Tennessee v. Whitworth*, 117 U. S. 145, 6 S. Ct. 649, 29 L. ed. 833; *Yazoo etc. Ry. v. Adams* 180 U. S. 22, 21 S. Ct. 240, 45 L. ed. 395.

²⁹¹ *Jefferson Branch Bank v. Skelly*, 1 Black, 447, 17 L. ed. 173; *Morgan v. Louisiana*, 93 U. S. 222, 23 L. ed. 860; *Southwestern R. R. v. Wright*, 116 U. S. 236, 6 S. Ct. 375, 29 L. ed. 626; *Vicksburg R. R. v. Dennis*, 116 U. S. 668, 6 S. Ct. 625, 29 L. ed. 770; *New Orleans R. R. v. New Orleans*, 143 U. S. 195, 12 S. Ct. 406, 36 L. ed. 121; *Wilmington etc. R. R. v. Alsbrook*, 146 U. S. 294, 13 S. Ct. 72, 36 L. ed. 972; *Keokuk etc. R. R. v. Missouri*, 152 U. S. 306, 14 S. Ct. 592, 38 L. ed. 450; *Phoenix Fire etc. Ins. Co. v. Tennessee*, 161 U. S. 178, 16 S. Ct. 471, 40 L. ed. 660.

²⁹² *Rector etc. v. Philadelphia County*, 24 How. 302, 16 L. ed. 602; *Bank v. Tennessee*, 104 U. S. 495, 26 L. ed. 810; *Railway Co. v. Loftin*, 105 U. S. 261, 26 L. ed. 1042; *Winona etc. Land Co. v. Minnesota*, 159 U. S. 529, 16 S. Ct. 88, 40 L. ed. 247.

²⁹³ *New Orleans v. Houston*, 119 U. S. 278, 7 S. Ct. 198, 30 L. ed. 411.

²⁹⁴ *Rector etc. v. Philadelphia*, 24 How. 300, 16 L. ed. 602; *Tucker v. Ferguson*, 22 Wall. 527, 22 L. ed. 805; *Brainerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116, 41 Am. Rep. 41; *West Wisconsin R. R. v. Supervisors*, 93 U. S. 597, 23 L. ed. 814.

years is a mere bounty and repealable.²⁹⁵ The consideration for the exemption must be something as to which there is no legal duty,²⁹⁶ and the pledge of a grand lodge to give its revenues to charity is insufficient to render the immunity irrevocable where the duty already exists.²⁹⁷

The benefits accruing to the community, however, may be a sufficient consideration,²⁹⁸ and wherever there is good consideration for the exemption there is a contract which is protected from repeal or modification.²⁹⁹ If property be given to a society for certain purposes, under a statute exempting such gifts from taxation, the statute constitutes a contract with the donors, and the property must be exempt so long as it is used for the purposes for which it was granted.³⁰⁰

A provision in the charter of an eleemosynary corporation or a university that its property shall be exempt is a contract entitled to protection;³⁰¹ but it seems that a statute which provides that public grants for pious and other uses shall be forever exempt from taxation has no effect upon prior grants, and as to them may be repealed without impairing the obligation

²⁹⁵ *Salt Co. v. East Saginaw*, 13 Wall. 377, 20 L. ed. 611, affirming 19 Mich. 259, 2 Am. Rep. 82; *Welch v. Cook*, 97 U. S. 543, 24 L. ed. 1112.

²⁹⁶ *Tucker v. Ferguson*, 22 Wall. 574, 22 L. ed. 805; *Bradley v. McAtee*, 7 Bush, 673, 3 Am. Rep. 13.

²⁹⁷ *Grand Lodge v. New Orleans*, 166 U. S. 149, 17 S. Ct. 523, 41 L. ed. 951.

²⁹⁸ *Home of the Friendless v. Bouse*, 8 Wall. 437, 19 L. ed. 495.

²⁹⁹ *State v. Wilson*, 7 Or. 167, 3 L. ed. 303; *Railway v. Philadelphia*, 101 U. S. 532, 25 L. ed. 912; *Thompson v. Holton*, 6 McLean, 386, Fed. Cas. No. 13,958; *Hewitt v. New York etc. Ry. Co.*, 12 Blatchf. 452, Fed. Cas. No. 6443.

³⁰⁰ *Atwater v. Woodbridge*, 6 Conn. 223; *Osborne v. Humphreys*, 7 Conn. 335; *Parker v. Redfield*, 10 Conn. 490; *Laudon v. Litchfield*, 11 Conn. 251; *Seymour v. Hartford*, 21 Conn. 481; *Herrick v. Randolph*, 13 Vt. 525. But see *Lord v. Litchfield*, 36 Conn. 116, 4 Am. Rep. 41.

³⁰¹ *Home for the Friendless v. Bouse*, 8 Wall. 436, 19 L. ed. 495; *Washington University v. Bouse*, 8 Wall. 439, 19 L. ed. 498; *Asylum v. New Orleans*, 105 U. S. 366, 26 L. ed. 1128, affirming 33 La. Ann. 856; *President etc. of College v. Shaefer*, 104 Mo. 267, 16 S. W. 396.

of any contract.³⁰² A statute providing that all lands purchased from the United States shall be exempt for a stipulated period constitutes a contract, and the lands cannot be taxed until the expiration of that time,³⁰³ and where a state, in order to promote the sale and reclamation of its swamp lands, exempts them from taxation for a certain number of years, any tax imposed upon them during that period is void.³⁰⁴ So, also, a statute declaring that all lands purchased for the use of Indians, in consideration of their relinquishing their claims to other lands, should forever be exempt is a contract.³⁰⁵

The exemption of lands extends also to the buildings erected thereon,³⁰⁶ unless the interest in the buildings is created entirely distinct from the interest in the lands, when the buildings may be taxed although the lands are exempt.³⁰⁷ If the land be exempt it will be exempt in the hands of the lessee,³⁰⁸ but where the lessee has covenanted to pay such taxes as may be assessed thereon, he is estopped to allege the unconstitutionality of a subsequent act imposing a tax.³⁰⁹ Where the exemption from taxation is annexed to the land it follows the land into the hands of a purchaser,³¹⁰ but where it is a personal privilege it will not pass to a purchaser unless by clear statutory direction.³¹¹ The mere authorization of sale is not of

³⁰² *Herrick v. Randolph*, 13 Vt. 525.

³⁰³ *Thompson v. Holton*, 6 McLean, 386, Fed. Cas. No. 13,958.

³⁰⁴ *McGee v. Mathis*, 4 Wall. 143, 18 L. ed. 314.

³⁰⁵ *New Jersey v. Wilson*, 7 Cr. 167, 3 L. ed. 303.

³⁰⁶ *Osborne v. Humphreys*, 7 Conn. 335.

³⁰⁷ *Parker v. Redfield*, 10 Conn. 490.

³⁰⁸ *Osborne v. Humphreys*, 7 Conn. 335; *Landon v. Litchfield*, 11 Conn. 251; *Hardy v. Waltham*, 24 Mass. 108; *Matheny v. Golden*, 5 Ohio St. 361; *Kumler v. Traber*, 5 Ohio St. 442.

³⁰⁹ *Hart v. Cornwall*, 14 Conn. 228.

³¹⁰ *State v. Wilson*, 7 Cr. 164, 3 L. ed. 303; *Stevens County v. St. Paul etc. Ry.*, 36 Minn. 471, 31 N. W. 944.

³¹¹ *Morgan v. Louisiana*, 93 U. S. 221, 23 L. ed. 860; *Railroad Co. v. County of Hamblen*, 102 U. S. 275, 26 L. ed. 152; *Wilson v. Gaines*, 103 U. S. 421, 26 L. ed. 401; *Memphis R. R. Co. v. Commissioners*, 112 U. S. 623, 5 S. Ct. 299, 28 L. ed. 837; *Gulf etc. Ry. Co. v. Hewes*, 183 U. S. 66, 22 S. Ct. 26, 46 L. ed. 86.

itself sufficient,³¹² and a subsequent statute may render it liable where it is conveyed without the reservation of an annual rent.³¹³

Immunity from taxation continues only while property is used for purposes for which it was given.³¹⁴ So a corporation changing its business from insurance to banking under a general enabling statute does not retain its exemption.³¹⁵ Exemption from taxation may be lost by lapse of time without claiming it, as by long acquiescence in the levy of a tax,³¹⁶ and where the original charter of a corporation exempted its property from taxation, but twenty-four years had elapsed before organization, a constitutional prohibition against exemptions adopted in the interim was held to cut off the right.³¹⁷

— State Debts and Liabilities.

The creditor of a state has a contract right which the legislature cannot impair by subsequent enactment,³¹⁸ and while a state may avoid the payment of its obligations by failure or refusal to make the necessary appropriation,³¹⁹ it cannot by affirmative legislation annul or impair a valid contract by

³¹² *Armstrong v. Treasurer*, 16 Pet. 281, 10 L. ed. 965.

³¹³ *New Haven v. Sheffield*, 30 Conn. 160; *Brainerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116, 4 Am. Rep. 41.

³¹⁴ *Home for the Friendless v. Rouse*, 8 Wall. 436, 19 L. ed. 495.

³¹⁵ *Memphis City Bank v. Tennessee*, 161 U. S. 190, 16 S. Ct. 468, 40 L. ed. 664.

³¹⁶ *Given v. Wright*, 117 U. S. 657, 6 S. Ct. 907, 29 L. ed. 1021.

³¹⁷ *Planters' Ins. Co. v. Tennessee*, 161 U. S. 197, 16 S. Ct. 466, 40 L. ed. 667.

³¹⁸ *Trustees of Wabash etc. Co. v. Beers*, 2 Black, 452, 17 L. ed. 327; *Curran v. Arkansas*, 15 How. 304, 14 L. ed. 705; *Louisiana v. Jumel*, 107 U. S. 711, 2 S. Ct. 128, 27 L. ed. 448; *Durkee v. Board of Liquidation*, 103 U. S. 646, 26 L. ed. 598; *Chaffraix v. Board of Liquidation*, 11 Fed. 628; *Ford v. Delta & Pine Land Co.*, 43 Fed. 181; *McCanley v. Brooks*, 16 Cal. 11; *State v. Cardozo*, 8 Rich. 71, 21 Am. Rep. 275.

³¹⁹ *Carr v. State*, 127 Ind. 204, 22 Am. St. Rep. 624, 26 N. E. 778, 11 L. R. A. 370; *State ex rel. v. Porter*, 89 Ind. 260.

which it has incurred indebtedness,³²⁰ and an appropriation once made cannot be withdrawn.³²¹

The diversion of funds or property held for the payment of debts of the state is repugnant to the prohibition against impairment,³²² and a statute divesting or postponing the lien of a bondholder who has loaned money upon the pledge of certain property is open to the same objection.³²³ But an act forbidding the funding of doubtful state obligations until their validity has been established by the courts does not impair any contract obligation.³²⁴ The mere passage of an act authorizing the issue of bonds and providing for taxation of all property to pay them gives to the bondholder no contract right which is impaired by the subsequent passage of a law restricting such taxation to real property,³²⁵ nor has he any right to insist upon the collection of the tax in the mode prescribed by law at the time the bonds were issued.³²⁶ Where, however, provision is made for taxation to meet state bonds an abatement of the tax which deprives a holder of his remedy is void.³²⁷ A provision for taxation to pay a claim which is not enforceable against the state, but is founded solely in equity and justice, gives no contract right, and a repeal of the provision is valid.³²⁸

After the payment of an obligation due the state a contract is implied that payments shall neither be repudiated nor

³²⁰ *Davis v. Gray*, 16 Wall. 203, 21 L. ed. 447; *Hall v. Wisconsin*, 103 U. S. 5, 26 L. ed. 302.

³²¹ *Durkee v. Board of Liquidation*, 103 U. S. 646, 26 L. ed. 598; *Louisiana v. Jumel*, 107 U. S. 711, 2 S. Ct. 128, 27 L. ed. 448; *McCauley v. Brooks*, 16 Cal. 11.

³²² *Chaffraix v. Board of Liquidation*, 11 Fed. 638; *State v. Cardozo*, 8 Rich. 71, 28 Am. Rep. 275.

³²³ *Trustees of Wabash etc. Co. v. Beers*, 2 Black, 452, 17 L. ed. 327; *Ford v. Delta & Pine Land Co.*, 43 Fed. 181.

³²⁴ *New York Guaranty etc. Co. v. Board of Liquidation*, 105 U. S. 624, 26 L. ed. 1106; *Commonwealth v. Jones*, 82 Va. 789, 1 S. E. 84.

³²⁵ *Gilman v. Sheboygan*, 2 Black, 510, 17 L. ed. 305.

³²⁶ *Gibbs v. Green*, 54 Miss. 592.

³²⁷ *Bunch v. Wolverstein*, 62 Miss. 56; *Morton v. Hoge*, 4 Rich. 430.

³²⁸ *People v. Montgomery*, 67 N. Y. 109.

denied, and a statute giving the state a right of action for debts already paid by warrant on the ground that such payments were void impairs the obligation of that contract.³²⁹ The repeal of a statute authorizing state bonds or coupons to be received in payment of taxes or debts due the state violates the contract with the bondholders and is void.³³⁰ The provision in general terms that such bonds and coupons shall be receivable for taxes and debts due the state applies to debts existing before the issue of the bonds,³³¹ and any restriction as to the kind of debts for which they shall be receivable is void to that extent.³³² Under such a provision bonds and coupons are receivable in payment of license taxes,³³³ and in payment of costs in suits to collect taxes.³³⁴ An act which provides that in suits wherein the defendant alleges the tender of coupons in payment of taxes he shall be obliged to prove their genuineness does not violate any right to have such coupons received in payment,³³⁵ but an act requiring the holders of such coupons, in suits involving their genuineness to produce in court the bonds from which they were cut and to prove that they were actually cut therefrom, or an act excluding expert evidence to prove their genuineness, is void.³³⁶ So, also, an

³²⁹ *Houston etc. R. R. v. Texas*, 177 U. S. 98, 20 S. Ct. 545, 44 L. ed. 673.

³³⁰ *Antoni v. Greenhow*, 107 U. S. 770, 2 S. Ct. 91, 27 L. ed. 468; *Poindexter v. Greenhow*, 114 U. S. 278, 5 S. Ct. 903, 29 L. ed. 185; *Chaffin v. Taylor*, 114 U. S. 309, 5 S. Ct. 924, 29 L. ed. 199; S. C., 116 U. S. 567, 6 S. Ct. 518, 29 L. ed. 727.

³³¹ *Royall v. Virginia*, 116 U. S. 578, 6 S. Ct. 510, 29 L. ed. 735.

³³² *McGahey v. Virginia*, 135 U. S. 701, 10 S. Ct. 972, 34 L. ed. 304; *Baltimore etc. R. R. v. Allen*, 17 Fed. 171; *Strickler v. Yager*, 29 Fed. 244; *Willis v. Miller*, 29 Fed. 238; *Antoni v. Wright*, 22 Gratt. 833.

³³³ *Harvey v. Virginia*, 20 Fed. 411.

³³⁴ *McGahey v. Virginia*, 135 U. S. 697, 10 S. Ct. 972, 34 L. ed. 304; but see *Ellet v. Commonwealth*, 85 Va. 517, 8 S. E. 246.

³³⁵ *Ex parte Ayers*, 123 U. S. 495, 31 L. ed. 216; *McGahey v. Commonwealth*, 85 Va. 519, 8 S. E. 244; *Laube v. Commonwealth*, 85 Va. 530, 8 S. E. 246.

³³⁶ *McGahey v. Virginia*, 135 U. S. 694, 10 S. Ct. 972, 34 L. ed. 304; overruling *Newton v. Commonwealth*, 82 Va. 647; *Commonwealth v. Weller*, 82 Va. 721, 1 S. E. 102; *Commonwealth v. Booker*, 82 Va.

act which requires that all demands against the state, excepting for salaries of officers, must be approved by a board of examiners before warrants can be drawn therefor, is void as to contracts giving an absolute right to such warrants,³³⁷ and a statute providing that no law levying a tax to pay interest on bonds shall take effect until such law shall have been submitted to popular vote materially impairs the obligation of such bonds.³³⁸ And the same is true of a law requiring a suit to determine the validity of coupons tendered in payment of taxes.³³⁹

A state may change the mode of paying its indebtedness providing no substantial right is thereby impaired,³⁴⁰ but an act postponing such payment is unconstitutional.³⁴¹

The consent of a state to be sued is a mere privilege and not a contract.³⁴² Accordingly a statute allowing suits may be repealed even as to actions already pending,³⁴³ and mandamus will lie to compel the dismissal of a suit pending upon the repeal of such a statute.³⁴⁴ The exercise by a state of its power to repeal a grant of authority to its courts to audit a claim

964, 7 S. E. 381; *Bryan v. Commonwealth*, 85 Va. 526, 8 S. E. 246; *Laube v. Commonwealth*, 85 Va. 530, 8 S. E. 246, and reversing *McGahey v. Commonwealth*, 85 Va. 519, 8 S. E. 244.

³³⁷ *McCauley v. Brooks*, 16 Cal. 11.

³³⁸ *State v. Young*, 29 Minn. 474, 9 N. W. 737. But see *Baltzer v. State*, 104 N. C. 265, 10 S. E. 153.

³³⁹ *McGahey v. Virginia*, 135 U. S. 695, 10 S. Ct. 972, 34 L. ed. 304, overruling *Commonwealth v. Jones*, 82 Va. 789, 1 S. E. 84.

³⁴⁰ *Sharp v. Contra Costa County*, 34 Cal. 284; *Lamkin v. Sterling*, 1 Idaho, 92.

³⁴¹ *Forstall v. Consolidated Assn. etc.*, 34 La. Ann. 770. But see *Swann v. Buck*, 40 Miss. 268.

³⁴² *Beers v. Arkansas*, 20 How. 529, 15 L. ed. 991; *Bank of Washington v. Arkansas*, 20 How. 530, 15 L. ed. 993; *Memphis etc. R. R. v. Tennessee*, 101 U. S. 340, 25 L. ed. 960; *In re Ayers*, 123 U. S. 505, 8 S. Ct. 183, 31 L. ed. 216; *Hans v. Louisiana*, 134 U. S. 17, 10 S. Ct. 508, 33 L. ed. 842.

³⁴³ *Beers v. Arkansas*, 20 How. 529, 15 L. ed. 991; *South etc. Ry. v. Alabama*, 101 U. S. 832, 26 L. ed. 973; *State v. Bank of Tennessee*, 3 Bart. 395.

³⁴⁴ *Ex parte State*, 52 Ala. 235, 23 Am. Rep. 571.

against itself does not impair the obligation of a contract entered into when the authority existed.³⁴⁵

— Prohibition as Applied to Other Public Contracts.

A contract for public printing let, according to constitutional requirement, to the lowest bidder is within the protection of this clause and cannot be invalidated by a subsequent legislature,³⁴⁶ and where the office of public printer has been abolished by the repeal of the statute creating it, private contracts for state printing cannot be revoked.³⁴⁷ A contract between the state and the publishers of the reports of the state supreme court, whereby the latter are given the protection of copyright procured by the state, is impaired by a law requiring the judges to prepare and file syllabi which would thus become part of the record and free for publication under the state constitution.³⁴⁸ An act adopting a certain text-book for use in schools, and prescribing the period of its use, does not, however, constitute a contract with the publishers of the adopted book, precluding a change during the prescribed period.³⁴⁹

Contracts for public works are also protected, and where a statute provides that contracts to construct roads shall in all cases be let to the lowest responsible bidder, another person cannot be substituted in place of such bidder.³⁵⁰ But a state law suspending or discontinuing the work on a public building, under contract, or providing for its continuance by other agencies, is not objectionable under this prohibition; the obligation of the contract is not impaired thereby, for the contractor, if not in default, has a just claim against the state for damages.³⁵¹ The legislature may change the rate of compensa-

³⁴⁵ *Baltzer v. North Carolina*, 161 U. S. 245, 16 S. Ct. 500, 40 L. ed. 648.

³⁴⁶ *State v. Barker*, 4 Kan. 324, 96 Am. Dec. 175.

³⁴⁷ *Jones v. Hobbs*, 4 Bart. 113.

³⁴⁸ *In re Headnotes to Opinions*, 43 Mich. 641, 8 N. W. 552. See, on subject of copyright by state, *Banks v. Manchester*, 128 U. S. 252, 9 S. Ct. 36, 32 L. ed. 425.

³⁴⁹ *Bancroft v. Thayer*, 5 Saw. 502, Fed. Cas. No. 835.

³⁵⁰ *Hannah v. Fife*, 27 Mich. 172.

³⁵¹ *Lord v. Thomas*, 64 N. Y. 107.

tion to be paid for services performed if no contract right is thereby impaired.³⁵²

A lease whereby the state gives to an individual the right to the services of its convicts is a contract which cannot be impaired by a lease to another.³⁵³ There is no contract between the state and a convict that he shall be kept in the penitentiary and there perform the labor imposed by his sentence, which is impaired by the lease of his labor.³⁵⁴ It has been held, however, that contracts for convict labor, whether made with the warden or the inspectors, are always subject to the right of the legislature to change its policy in regard to the state's penal system.³⁵⁵

A grant made for the purpose of public instruction is not subject to subsequent legislative control,³⁵⁶ but if a scholarship does not name the place of tuition the locality of the college may be changed.³⁵⁷ Where parties dedicate a square to public use the legislature cannot authorize its sale and use for a purpose foreign to the object of the grant;³⁵⁸ but subjecting the land of a grantee to the payment of his debts does not impair vested rights under the grant.³⁵⁹

In the exercise of its police powers the legislature may prohibit the use of a place as a cemetery, although there is a covenant in the grant that the place may be so used.³⁶⁰

A law for establishment of a county seat has reference to a public subject with respect to which one legislature cannot bind

³⁵² *Clark v. State*, 142 N. Y. 101, 36 N. E. 817.

³⁵³ *Georgia Penitentiary Co. v. Nelms*, 71 Ga. 301.

³⁵⁴ *Mason etc. Co. v. Main Jellico Mountain Coal Co.*, 87 Ky. 467, 9 S. W. 391.

³⁵⁵ *Hancock v. Ewing*, 55 Mo. 101.

³⁵⁶ *Terrett v. Taylor*, 9 Cr. 43, 3 L. ed. 650; *Grammar School v. Burt*, 11 Vt. 682.

³⁵⁷ *Houston v. Jefferson College*, 63 Pa. St. 428.

³⁵⁸ *Warren v. Mayor*, 22 Iowa, 351.

³⁵⁹ *Livingston v. Moore*, 7 Pet. 469, 8 L. ed. 751; *Baldw.* 424, Fed. Cas. No. 8416.

³⁶⁰ *Coates v. New York*, 7 Cow. 585; *Presbyterian Church v. New York*, 5 Cow. 538. And see *Lake View v. Rose Hill Cemetery*, 70 Ill. 131, 22 Am. Rep. 71.

its successors, and the location may be changed notwithstanding the original establishment was upon conditions which were fulfilled.³⁶¹ So an act providing that a county seat shall not be removed without repayment to land owners of expenditures incurred on the faith of its location, is not a contract.³⁶² The same rule applies to the location of a state capitol.³⁶³

Where a religious corporation is under a disability to convey by its charter, the legislature may authorize a sale,³⁶⁴ and a statute providing for the sale of lands by tenants in common, or joint tenants, is valid.³⁶⁵ A statute perfecting a voidable entry and giving a patent therefor is unobjectionable, although it divests a grant made after entry.³⁶⁶

Legislative Control of Municipal Corporations.

Public corporations, such as counties, towns, and cities, are created by authority of the legislature and invested with subordinate legislative powers to be exercised for local purposes connected with the public good.³⁶⁷ The charters of such corporations cannot be considered contracts within the protection of the obligation clause,³⁶⁸ and the legislature has unlim-

³⁶¹ *Newton v. Mahoning County Commrs.*, 100 U. S. 559, 25 L. ed. 710, affirming 26 Ohio St. 618; *Ewell v. Tucker*, 1 Blackf. 285; *Alley v. Denson*, 8 Tex. 297; *Luce v. Fensler*, 85 Iowa, 601, 52 N. W. 519. But see *Gill v. Scowden*, 14 Phila. 626.

³⁶² *Moses v. Kearney*, 31 Ark. 261.

³⁶³ *Edwards v. Lesueur*, 132 Mo. 440, 33 S. W. 1135, 31 L. R. A. 815.

³⁶⁴ *Barton's Appeal*, 57 Pa. St. 213.

³⁶⁵ *Richardson v. Monson*, 23 Conn. 94.

³⁶⁶ *Williams v. Norris*, 12 Wheat. 117, 6 L. ed. 571.

³⁶⁷ *Bissell v. Jeffersonville*, 24 How. 294, 16 L. ed. 664; *Jones v. Pensacola*, 13 Fed. Cas. 1005; *Leavenworth v. Miller*, 7 Kan. 506, 12 Am. Rep. 439.

³⁶⁸ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 629, 4 L. ed. 629; *Merriwether v. Garrett*, 102 U. S. 511, 26 L. ed. 197; *East Hartford v. Hartford Br.*, 10 How. 511, 13 L. ed. 518; *Barnes v. District of Columbia*, 91 U. S. 540, 23 L. ed. 440; *Mount Pleasant v. Beckwith*, 100 U. S. 514, 25 L. ed. 699; *Oshkosh Waterworks Co. v. Oshkosh*, 187 U. S. 437, 23 S. Ct. 234, 47 L. ed. 249; *Cornell v. Walsh*, 107 Ind. 372; *State v. Peoples' etc. Co.*, 46 La. Ann. 1031, 15 South. 408; *Bradford v. Carey*, 5 Me. 339; *Baltimore v. State*, 15 Md. 376; *Commonwealth v. Plaisted*, 148 Mass. 375, 19 N. E. 224, 2 L. R. A.

ited power to alter, annul or repeal them unless the state constitution provides otherwise.³⁶⁹ A municipal corporation is a mere creature of the legislature, established for the purposes of government and entirely subject to the legislative will;³⁷⁰ transactions between the legislature and such a corporation are in the nature of legislation rather than of compact.³⁷¹ A power to alter and change public corporations and to adapt them to public purposes is implied,³⁷² and grants of power may at any time be resumed by the legislature.³⁷³ Those grants are not franchises in the original meaning of that word, but mandates only, and may be repealed except so far as rights acquired by third parties under them may be affected.³⁷⁴

A school district is a public corporation within the meaning of that term as here employed,³⁷⁵ and the rights of the inhab-

142; *City of Detroit v. Blackeby*, 21 Mich. 84, 4 Am. Rep. 450; *People v. Morris*, 13 Wend. 325; *People v. Pinckney*, 32 N. Y. 377; *In re Clinton St.*, 2 Brewst. 599; *Lynch v. Lafland*, 4 Cold. 96.

³⁶⁹ *Commissioners of Laramie County v. Albany County*, 92 U. S. 308, 23 L. ed. 552; *North Yarmouth v. Skillings*, 45 Me. 133, 71 Am. Dec. 530; *Cobb v. Kingman*, 15 Mass. 137; *People v. Hill*, 7 Cal. 97; *Philadelphia v. Fox*, 14 P. F. Smith, 169; *Gas and Water Co. v. Downingtown*, 175 Pa. St. 341, 34 Atl. 799.

³⁷⁰ *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 79, 12 S. Ct. 142, 35 L. ed. 943.

³⁷¹ *East Hartford v. Hartford Br. Co.*, 10 How. 534, 13 L. ed. 518; *Williamson v. New Jersey*, 130 U. S. 199, 9 S. Ct. 457, 32 L. ed. 915; *Erskine v. Steele Co.*, 87 Fed. 634; *Commissioners v. Holyoke W. P. Co.*, 104 Mass. 459, 6 Am. Rep. 259; *Parkhurst v. Capital City Ry.*, 23 Or. 479, 32 Pac. 306; *Trustees v. Tatman*, 13 Ill. 27, *Reynolds v. Baldwin*, 1 La. Ann. 162; *Layton v. New Orleans*, 12 La. Ann. 515.

³⁷² *Maryland v. Baltimore etc. R. R.*, 3 How. 550, 11 L. ed. 714; *Works v. Emigrant Co.*, 164 U. S. 576, 17 S. Ct. 193, 41 L. ed. 552; *Erskine v. Steele Co.*, 87 Fed. 634; *Mayor of Baltimore v. State*, 15 Md. 385; *Wooster v. Plymouth*, 62 N. H. 208; *Bridgeport v. Hubbell*, 5 Conn. 237; *Bush v. Shipman*, 5 Ill. 186; *Mills v. Williams*, 11 Ired. 558; *Gatzweiler v. People*, 14 Ill. 142; *North Yarmouth v. Skillings*, 45 Me. 133; *Trustees v. Aberdeen*, 21 Miss. 645; *Peterson v. Society*, 24 N. J. 385; *People v. Morris*, 13 Wend. 325.

³⁷³ *Terrett v. Taylor*, 9 Cr. 52, 3 L. ed. 650; *Trustees v. Tatman*, 13 Ill. 27; *St. Louis v. Gaslight Co.*, 5 Mo. App. 513.

³⁷⁴ *Police Jury v. Shreveport*, 5 La. Ann. 661; *State v. Pillsbury*, 31 La. Ann. 1.

³⁷⁵ *Mobile School Commrs. v. Putnam*, 44 Ala. 506.

itants of the district which arise out of and depend upon the corporate existence of the district are of a public and political nature, and are liable to be taken away by the legislature.³⁷⁶ A municipal corporation's powers do not rest upon contracts with the state.³⁷⁷

— Territorial Limits.

In the absence of some express restriction in the state constitution, the legislature may prescribe and enlarge, from time to time, the boundaries of a municipal corporation,³⁷⁸ and this without the consent of the citizens of the annexed land.³⁷⁹ The fact that the extension of a city's limits includes purely agricultural land outside the original area is immaterial.³⁸⁰ Discriminations between individuals and corporations as to annexation of land used for agricultural purposes cannot be urged as a ground for defeating the annexation of land used for other purposes;³⁸¹ nor can the courts interfere in favor of one who, by an unnecessary extension of the city limits, is rendered subject to municipal taxation without any corresponding benefit to his property.³⁸²

A statute may take part of the territory of one municipal corporation and annex it to another,³⁸³ and counties or county organizations may be abolished whenever it becomes necessary to do so, in changing county lines or in creating new

³⁷⁶ *In re Farnum*, 51 N. H. 376.

³⁷⁷ *Mount Pleasant v. Beckwith*, 100 U. S. 525, 25 L. ed. 699; *Williamson v. New Jersey*, 130 U. S. 199, 9 S. Ct. 453, 32 L. ed. 915.

³⁷⁸ *City of New Orleans v. Cazelar*, 27 La. Ann. 156; *Stoner v. Flournoy*, 28 La. Ann. 850; *Groff v. Frederick City*, 44 Md. 67; *Martin v. Dix*, 52 Miss. 53, 24 Am. Rep. 661; *City of Philadelphia v. Fox*, 14 P. F. Smith, 169; *McCallie v. Chattanooga*, 3 Head, 317; *Wade v. City of Richmond*, 18 Gratt. 583.

³⁷⁹ *Morford v. Unger*, 8 Iowa, 82; *Manley v. Baleigh*, 4 Jones Eq. 370; *St. Louis v. Russell*, 9 Mo. 507; *State v. Miller*, 55 Mo. 50.

³⁸⁰ *Giboney v. Cape Girardeau*, 58 Mo. 141.

³⁸¹ *Clark v. Kansas City*, 176 U. S. 118, 120, 20 S. Ct. 284, 44 L. ed. 392.

³⁸² *Martin v. Dix*, 52 Miss. 53, 24 Am. Rep. 661.

³⁸³ *Wade v. Richmond*, 18 Gratt. 583.

counties.³⁸⁴ The power to divide the property is incidental to the power to divide the territory,³⁸⁵ as also is the division of the municipal indebtedness.³⁸⁶ But a law which repeals an act passed upon the division of a township, requiring each town to bear its proportionate share of the expenses of paupers, is unconstitutional.³⁸⁷

The legislature may unite and divide townships and their school funds,³⁸⁸ and may dissolve fire districts composed of portions of more than one town and provide for a division of their funds;³⁸⁹ but it cannot divert the fund from a land grant to a township although it may abolish the township.³⁹⁰ Where by operation of law the property of a town of the third class becomes vested in the city upon its advancement to a city of the second class, the legislature cannot order a sale of the property and the division of the proceeds between the city and the town.³⁹¹

— Property of Municipalities.

A statute giving a municipal corporation the power to purchase property of a private corporation may be repealed or

³⁸⁴ *In re Division of Howard County*, 15 Kan. 194.

³⁸⁵ *Richmond v. Lawrence*, 12 Ill. 1; *North Yarmouth v. Skillings*, 45 Me. 133, 71 Am. Dec. 530; *Bristol v. New Chester*, 3 N. H. 524; *Call v. Chadbourne*, 46 Me. 206; *Town of Windham v. Town of Portland*, 4 Mass. 384; *New Hampshire County v. Franklin County*, 16 Mass. 76.

³⁸⁶ *People v. Alameda County*, 26 Cal. 641; *Whitney v. Town of Stow*, 111 Mass. 368; *Bawson v. Spencer*, 113 Mass. 40; *Stone v. Charlestown*, 114 Mass. 214; *Portwood v. Montgomery County*, 52 Miss. 523; *Londonderry v. Derry*, 8 N. H. 320; *Metcalf v. State*, 19 Ohio St. 586, 31 N. E. 1076.

³⁸⁷ *Bowdoinham v. Richmond*, 6 Me. 112, 19 Am. Dec. 197.

³⁸⁸ *Greenleaf v. Township*, 22 Ill. 236.

³⁸⁹ *Weymouth etc. Fire District v. Norfolk County Commissioners*, 108 Mass. 142.

³⁹⁰ *State v. Springfield*, 6 Ind. 83; *Morton v. Granada Acad.*, 16 Miss. 773.

³⁹¹ *City of Wellington v. Wellington Twp.*, 46 Kan. 213, 26 Pac. 415.

modified at the will of the legislature.³⁹² So, also, a grant to a municipal corporation of the revenues accruing from a private corporation may be altered or repealed, and such revenues be appropriated to other purposes;³⁹³ but where the legislature has granted bonds to a municipal corporation, a subsequent statute vesting the right to the bonds in others is void.³⁹⁴ The legislature cannot deprive a municipal corporation of its private property without the consent of its inhabitants;³⁹⁵ a distinction exists between regulation and appropriation, and the legislature may not arbitrarily divest private property of the corporation,³⁹⁶ and where property derived by municipalities from other sources than the state is held for special uses the legislature cannot divert it.³⁹⁷ Where, however, a municipality holds property merely as trustee, its rights and title are subject to be defeated by the abolishment of its corporate existence.³⁹⁸

A law granting to a town the right to operate a ferry across a public river does not amount to a contract and may be revoked by the legislature;³⁹⁹ but it has been held that a bridge franchise acquired by a city from a private corporation could not be impaired by legislation authorizing the county to construct a toll-gate on such bridge and collect tolls.⁴⁰⁰ Where a city is seised in fee of the lands in its streets, in trust, to keep the same open, the legislature may declare and define the

³⁹² *Crescent City Gas Co. v. New Orleans Gas Co.*, 27 La. Ann. 138.

³⁹³ *Police Jury v. Shreveport*, 5 La. Ann. 661; *Marks v. Donaldson*, 24 La. Ann. 242. But see *Ellerman v. Mains*, 30 La. Ann. 190, 31 Am. Rep. 218.

³⁹⁴ *Spaulding v. Andover*, 54 N. H. 38.

³⁹⁵ *Grogan v. San Francisco*, 18 Cal. 590.

³⁹⁶ *Essex etc. Road Board v. Skinkle*, 140 U. S. 342, 11 S. Ct. 790, 35 L. ed. 446.

³⁹⁷ *Commissioners v. Lucas*, 93 U. S. 115, 23 L. ed. 822; *Mount Hope Cemetery v. Boston*, 158 Mass. 512, 35 Am. St. Rep. 518, 33 N. E. 695. But see *Darlington v. New York*, 31 N. Y. 164, 88 Am. Dec. 248.

³⁹⁸ *Bass v. Fontleroy*, 11 Tex. 698; *Montpelier v. East Montpelier*, 29 Vt. 12, 67 Am. Dec. 748. See, also, *Milam v. Bateman*, 54 Tex. 153.

³⁹⁹ *East Hartford v. East Hartford Br. Co.*, 10 How. 534, 13 L. ed. 518.

⁴⁰⁰ *City of Columbus v. Rodgers*, 10 Ala. 37.

uses and purposes of the trust;⁴⁰¹ but where land has been taken for the purpose of a road and has been paid for according to law, an act of the legislature directing a reduction in the width of such road, and in effect restoring the property to its former owners, is unconstitutional as impairing the obligation of the contract of purchase.⁴⁰²

Where a city has been authorized to erect and maintain wharves and to collect wharfage fees, its right extends only to the collection of fees for the use of its own wharves, and no contract obligation is impaired by a grant of a similar right to a railroad company;⁴⁰³ nor is the contract by which a city acquires a levee for public use impaired by a legislative grant to a railroad of the right to use the levee for a depot.⁴⁰⁴ The disposition of municipal property and funds is subject also to the paramount power of the legislature.⁴⁰⁵ So where a municipality has conveyed certain property belonging to it by defective deed the legislature may validate the disposition,⁴⁰⁶ and may regulate elevators leased by a city to a corporation.⁴⁰⁷

The control of the legislature over the revenues of municipalities is as absolute as the control over any municipal property.⁴⁰⁸ Accordingly, although the effect of a statute is to pledge city property to secure the payment of a public debt, the legislature may revoke the pledge where contract rights have

⁴⁰¹ *Kelsey v. King*, 33 How. Pr. 39.

⁴⁰² *People v. Highway Commissioners*, 53 Barb. 77.

⁴⁰³ *New Orleans etc. R. Co. v. Ellerman*, 105 U. S. 172, 26 L. ed. 1015.

⁴⁰⁴ *Coffin v. City of Portland*, 27 Fed. 412.

⁴⁰⁵ *Board of Liquidation v. Louisville etc. R. R.*, 109 U. S. 223, 3 S. Ct. 144, 27 L. ed. 916; *McDonald v. Maddux*, 11 Cal. 187; *Payne v. Treadwell*, 16 Cal. 220; *Richland County v. Lawrence County*, 12 Ill. 1; *People v. Power*, 25 Ill. 187; *State v. St. Louis County Court*, 34 Mo. 546; *Dickinson v. Marion County Court*, 128 Mo. 427, 30 S. W. 103; *State v. Patterson*, 53 N. J. L. 120, 20 Atl. 828.

⁴⁰⁶ *Payne v. Treadwell*, 16 Cal. 220.

⁴⁰⁷ *Belcher Sugar Ref. Co. v. St. Louis Grain etc. Co.*, 101 Mo. 205, 13 S. W. 825, 8 L. R. A. 801.

⁴⁰⁸ *Commissioners v. Lucas*, 93 U. S. 108, 23 L. ed. 822, affirming 44 Ind. 524; *United States v. Thoman*, 156 U. S. 360, 15 S. Ct. 378, 39 L. ed. 450.

not intervened,⁴⁰⁹ and may repeal an act authorizing a certain disposition of a city's surplus yearly revenue.⁴¹⁰ So, also, a statute may require a municipality to apply its revenues to the discharge of claims based merely upon equity and good conscience,⁴¹¹ or may require that money be raised for a public purpose, such as the construction and repair of highways and the erection of public buildings.⁴¹² On the other hand, while the right to reimbursement for damages caused by a mob may be based upon equity and good conscience, it may be withdrawn or limited by the legislature.⁴¹³

— Municipal Government and Officers.

A municipal corporation has no contract rights in its public offices, and powers previously vested in municipal officers may be transferred to officers appointed by the governor,⁴¹⁴ and the power to contract may be taken from a board of supervisors and conferred upon another officer or body.⁴¹⁵ The establishment of police districts and their government are within the power of the legislature,⁴¹⁶ and the transfer of the police force from a city government to state commissioners does not impair any contract obligation.⁴¹⁷ Commissioners of highways de-

⁴⁰⁹ *Board of Liquidation v. Louisville etc. R. R.*, 109 U. S. 228, 3 S. Ct. 144, 27 L. ed. 916.

⁴¹⁰ *United States v. Thoman*, 156 U. S. 360, 15 S. Ct. 378, 39 L. ed. 450.

⁴¹¹ *Blanding v. Burr*, 13 Cal. 351; *Town of Guilford v. Supervisors*, 13 N. Y. 143; *Creighton v. San Francisco*, 42 Cal. 446; *Craft v. Lofneck*, 34 Kan. 365, 8 Pac. 359. But see *Warren County v. Cowan*, 60 Miss. 876, 45 Am. Rep. 453.

⁴¹² *People v. Flagg*, 46 N. Y. 401; *People v. Supervisors*, 50 Cal. 561; *Thomas v. Leland*, 24 Wend. 65; *Pumphrey v. Mayor of Baltimore*, 47 Md. 145, 28 Am. Rep. 446; *Carter v. Cambridge etc. Bridge Props.*, 104 Mass. 236; *Perkins v. Slack*, 86 Pa. St. 270.

⁴¹³ *Louisiana v. Mayor of New Orleans*, 109 U. S. 287, 3 S. Ct. 211, 27 L. ed. 936.

⁴¹⁴ *State v. Kolsem*, 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566.

⁴¹⁵ *Pott v. Sheboygan County*, 25 Wis. 506; *State v. Cogshall*, 65 N. W. 2.

⁴¹⁶ *Galley v. Ginahard*, 27 La. Ann. 396; *Pickler v. McLellon Dry Dock Co.*, 38 La. Ann. 412.

⁴¹⁷ *City of Baltimore v. State*, 15 Md. 376; *State v. Seavey*, 22 Neb. 454, 35 N. W. 228.

rive their authority from the legislature which may revoke or resume it at any time.⁴¹⁸ The trustees of a charity granted to a city may be changed by the legislature.⁴¹⁹

The legislature may confirm the election of officers held before the act of incorporation and validate the acts of such officers,⁴²⁰ may designate another depository for public funds, other than the one named in the charter,⁴²¹ remove an officer for failure to take an oath of allegiance,⁴²² require payment for services rendered by an officer under a prior act which required such services to be paid for by other persons,⁴²³ or may require a city to pay an officer compensation in addition to the salary paid by the state.⁴²⁴ So, also, the legislature may alter a municipal charter so as to change the person upon whom service of process must be made,⁴²⁵ or may withdraw or modify the power to grant licenses,⁴²⁶ or may change the mode and time of payment of municipal indebtedness,⁴²⁷ or may regulate the mode of selection and removal of a county seat,⁴²⁸ or may increase the number of directors to which a municipal corporation is entitled.⁴²⁹

⁴¹⁸ *People v. Fishkill etc. Co.*, 27 Barb. 445.

⁴¹⁹ *Philadelphia v. Fox*, 64 Pa. St. 169.

⁴²⁰ *State v. Kline*, 23 Ark. 587.

⁴²¹ *State v. Boyles*, 7 Blackf. 90.

⁴²² *State v. Adams*, 44 Mo. 570.

⁴²³ *Southworth v. City*, 24 La. Ann. 312. But see *Warren County v. Cowan*, 60 Miss. 876, 45 Am. Rep. 453.

⁴²⁴ *City of Covington v. Menzies*, 24 S. W. 242.

⁴²⁵ *Perkins v. Watertown*, 5 Biss. 320, Fed. Cas. No. 10,991.

⁴²⁶ *Gatzweiler v. People*, 14 Ill. 142; *Morris v. People*, 13 Wend. 325; *City of Winona v. Whipple*, 24 Minn. 61; *Dickason v. Marion County Court*, 128 Mo. 427, 30 S. W. 103.

⁴²⁷ *Hunsaker v. Borden*, 5 Cal. 288, 63 Am. Dec. 130.

⁴²⁸ *Newton v. Mahoning County Commrs.*, 100 U. S. 548, 25 L. ed. 710; *Moses v. Kearney*, 31 Ark. 261; *Ewell v. Tucker*, 1 Blackf. 208; *Armstrong v. Dearborn County Commrs.*, 4 Blackf. 208; *Hansrick v. House*, 17 Ga. 56; *Adams v. Logan*, 11 Ill. 336; *Harris v. Shaw*, 13 Ill. 456; *State v. Jones*, 1 Ired. 414; *Alley v. Denson*, 8 Tex. 297. But see *State v. Perry County Commrs.*, 5 Ohio St. 497; *Gill v. Scowden*, 14 Phila. 626.

⁴²⁹ *Miller v. State*, 15 Wall. 478, 21 L. ed. 98; *People v. Hills*, 16 Barb. 340.

A charter exempting corporation stock from taxation, except for state purposes, thus affecting a city's taxing power, is binding upon the municipality.⁴³⁰ A statute allowing a municipal corporation to set off a claim for benefits against a suit for damages impairs no contract obligation.⁴³¹

— **Municipal Contracts Generally.**

Municipal corporations, with respect to their private rights and interests, are protected by the constitution against legislation impairing the obligation of contracts,⁴³² and such corporations, while subject to state control, are, as owners of stock and issuers of bonds, secured by all the guaranties which protect the engagements of private individuals.⁴³³ It is not within the power of the legislature, by the repeal of a municipal charter, to invade the rights of a city's creditors and cancel its indebtedness; such legislation impairs the obligation of contracts,⁴³⁴ and where the state authorizes a municipal corporation to contract and to exercise its power of local taxation to the extent necessary to meet its engagements, the power given cannot be withdrawn until the contract is satisfied.⁴³⁵

⁴³⁰ *State Bank v. Madison*, 3 Ind. 43; *Bank v. New Albany*, 11 Ind. 139.

⁴³¹ *Baldwin v. Newark*, 9 Vroom, 158; *Loweree v. Newark*, 9 Vroom, 151.

⁴³² *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 91, 12 S. Ct. 142, 35 L. ed. 943.

⁴³³ *Mobile v. Watson*, 116 U. S. 305, 6 S. Ct. 398, 29 L. ed. 620.

⁴³⁴ *Milner v. City of Pensacola*, 2 Woods, 632, Fed. Cas. No. 9619; *Bleakey v. Williams*, 20 Pitts. L. J. 66; *Morris v. State*, 62 Tex. 728.

⁴³⁵ *Von Hoffman v. City of Quincy*, 4 Wall. 554, 18 L. ed. 403; *Galena v. Amy*, 5 Wall. 709, 18 L. ed. 560; *Riggs v. Johnson County*, 6 Wall. 194, 18 L. ed. 768; *Wolff v. New Orleans*, 103 U. S. 366, 26 L. ed. 395; *Louisiana v. Pillsbury*, 105 U. S. 288, 26 L. ed. 1090; *Mobile v. Watson*, 116 U. S. 305, 6 S. Ct. 405, 29 L. ed. 620; *United States v. Jefferson County*, 5 Dill. 313, 1 McCrary, 359, Fed. Cas. No. 15,472; *Lansing v. County*, 1 Dill. 522, 2 Abb., U. S. 53; *Hicks v. Cleveland*, 106 Fed. 429; *Padgett v. Post*, 106 Fed. 600; *People v. Bell*, 10 Cal. 570; *Dominie v. Sayre*, 3 Sand. 555; *McClem v. Meekins*, 117 N. C. 40, 23 S. E. 101.

A state cannot release a municipal corporation from its contracts without the consent of the other party,⁴³⁶ nor can it require the city to rescind a sale of land made when such sale was authorized by law;⁴³⁷ nor impair a contract for street work.⁴³⁸ Upon the same ground, a municipal corporation itself cannot revoke a donation actually made or impose new terms or duties upon the donees.⁴³⁹ If a city may legally purchase the property of a private corporation, a subsequent statute taking away the right cannot affect it so far as the right has been actually exercised.⁴⁴⁰

The power conferred upon municipal corporations to raise money is political and its application is within the control of the legislature;⁴⁴¹ but a state cannot authorize a municipal corporation to levy a tax which the state itself has no power to levy.⁴⁴² A city may make such contracts as are allowed by the act incorporating it, but it cannot pledge its legislative power to bind its legislative capacity.⁴⁴³ When a municipal corporation engages in matters not public in their nature it is bound by its acts as much as if it were a natural person,⁴⁴⁴ and if it sells lots the use of the streets passes as an appurtenant and it cannot afterward alter or defeat the dedication.⁴⁴⁵ The compliance with the conditions of a grant is a contract which can-

⁴³⁶ *Davenport County v. Davenport*, 13 Iowa, 229; *People v. Fishkill P. R. Co.*, 27 Barb. 445; *Town of Duaneborough v. Jenkins*, 57 N. Y. 177; *State v. Williams*, 10 Tex. Civ. App. 346, 30 S. W. 477; *Atkins v. Town of Randolph*, 31 Vt. 226.

⁴³⁷ *Butler v. Chariton*, 13 Mo. 112.

⁴³⁸ *Goodale v. Fennell*, 27 Ohio St. 426, 22 Am. Rep. 321.

⁴³⁹ *Louisville v. University*, 15 B. Mon. 642; *Los Angeles v. Los Angeles City Water Co.*, 61 Cal. 65.

⁴⁴⁰ *Sala v. New Orleans*, 2 Woods, 188, Fed. Cas. No. 12,246.

⁴⁴¹ *People v. Power*, 25 Ill. 187.

⁴⁴² *O'Donnelly v. Bailey*, 24 Miss. 386; *Camden etc. R. R. v. Commissioners*, 18 N. J. 71; *Camden etc. R. R. v. Hillegas*, 18 N. J. 11.

⁴⁴³ *Gozzler v. Georgetown*, 6 Wheat. 598, 5 L. ed. 339; *State v. Graves*, 19 Md. 534, 81 Am. Dec. 646; *Lake etc. Ry. v. Mayor*, 77 Md. 375, 26 Atl. 514, 20 L. E. A. 126; *Coates v. New York*, 7 Cow. 585.

⁴⁴⁴ *West Savings Fund v. Philadelphia*, 31 Pa. St. 175.

⁴⁴⁵ *Breed v. Cunningham*, 2 Cal. 361.

not be impaired,⁴⁴⁶ and an ordinance requiring a license fee after the grant of a franchise to run street-cars has been declared void.⁴⁴⁷ So also the repeal of an ordinance requiring a bond from an auctioneer cannot destroy or affect any right acquired under the ordinance.⁴⁴⁸

Every transaction of a municipal corporation with third parties does not, however, partake of a contractual nature; nor does every act of the legislature injuriously affecting such third parties come within the prohibition of this clause. The mere fact that a contract made by a city with a water company has received final judicial interpretation does not, so far as the city's rights are concerned, in any way preclude the exercise of the legislature to change the terms of the contract,⁴⁴⁹ and where the legislature in incorporating a gaslight company reserved to the city the privilege of purchase, no contract obligation is impaired by the recall of the privilege.⁴⁵⁰ So, also, where a statute forbids the abandonment of a railroad station without the consent of the commissioners, such consent when obtained gives no contract right which is impaired by a later act ordering resumption of the use of the station.⁴⁵¹

The erection of a toll bridge, under authorization by the legislature, within a few yards of a ferry licensed by a county under state laws, does not impair the obligation of the ferry franchise.⁴⁵² A grant of waterfront land by a city, with a right to construct wharves, is always subject to the power of the legislature to change the waterfront, although such change might incidentally render useless the rights granted by the city,⁴⁵³ and a covenant in a deed by a city that adjacent streets

⁴⁴⁶ *Brooklyn C. R. R. v. Brooklyn etc. Co.*, 32 Barb. 358.

⁴⁴⁷ *Mayor v. Second Ave. etc. Co.*, 34 Barb. 41; *In re Peters*, New York El. R. R., 70 N. Y. 327; *East Louisiana Ry. v. City of New Orleans*, 46 La. Ann. 526, 15 South. 157.

⁴⁴⁸ *McMahan v. Mayor*, 2 Har. & J. 41.

⁴⁴⁹ *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 79, 12 S. Ct. 142, 35 L. ed. 943.

⁴⁵⁰ *Crescent City Gaslight Co. v. New Orleans Gaslight Co.*, 27 La. Ann. 138.

⁴⁵¹ *New Haven etc. Ry. v. Hamersley*, 104 U. S. 1, 26 L. ed. 629.

⁴⁵² *Dyer v. Tuscaloosa Br. Co.*, 2 Port. 296, 27 Am. Dec. 655.

⁴⁵³ *Whitney v. City of New York*, 6 Abb. N. C. 329.

should never be appropriated to private uses is not impaired by a grant of the partial use of the street by an elevated railroad.⁴⁵⁴ A license for the carrying on of a particular business within a city is not a contract within the meaning of the obligation clause,⁴⁵⁵ and where a city, for a valuable consideration, has authorized a person to connect his property with a certain railroad, it is not thereby precluded from ordering the removal of the railroad.⁴⁵⁶ A city, under its police power, may order the removal of powder magazines from land which it sold for the purpose of their erection,⁴⁵⁷ and it may prohibit the use of land for a cemetery which it has conveyed to a church with a covenant of quiet enjoyment.⁴⁵⁸ A city ordinance imposing a license tax upon a foreign corporation authorized by state law to transact business does not impair any contract obligation.⁴⁵⁹

The constitutional guaranty against impairment presupposes a legal contract on the part of the city,⁴⁶⁰ and a city can convey only such title to lands as is authorized by law; where it attempts to go beyond this it creates no contract within the protection of the constitution.⁴⁶¹

— Municipal Aid to Corporations.

In the absence of constitutional prohibition, the legislature may authorize municipal corporations to extend aid to corporations of a public nature,⁴⁶² and an act authorizing a subscrip-

⁴⁵⁴ *Spader v. New York El. R. R.*, 3 Abb. N. C. 467; *Story v. New York El. R. R.*, 3 Abb. N. C. 478.

⁴⁵⁵ *City of St. Charles v. Hackman*, 133 Mo. 634.

⁴⁵⁶ *Branson v. City of Philadelphia*, 11 Wright, 329.

⁴⁵⁷ *Davenport v. City of Richmond*, 81 Va. 636, 59 Am. Rep. 694.

⁴⁵⁸ *Presbyterian Church v. New York*, 5 Cow. 538; *Coates v. New York*, 7 Cow. 585.

⁴⁵⁹ *Home Ins. Co. v. City Council*, 93 U. S. 122, 23 L. ed. 825; *Osborn v. Mobile*, 16 Wall. 482, 21 L. ed. 470; *Postal Tel. Co. v. Charleston*, 153 U. S. 695, 10 S. Ct. 1095, 38 L. ed. 871.

⁴⁶⁰ *New Orleans v. New Orleans Waterworks Co.*, 142 U. S. 88, 12 S. Ct. 142, 35 L. ed. 948; *City Ry. Co. v. Citizens' R. R. Co.*, 166 U. S. 564, 17 S. Ct. 655, 41 L. ed. 1114.

⁴⁶¹ *Hoadley v. San Francisco*, 124 U. S. 639, 8 S. Ct. 659, 31 L. ed. 553; *San Francisco v. Itsell*, 80 Cal. 59, 22 Pac. 75; *San Francisco v. Mooney*, 106 Cal. 587, 39 Pac. 853.

⁴⁶² *Gilman v. Sheboygan*, 2 Black, 515, 17 L. ed. 305; *Van Hostruck v. Madison City*, 1 Wall. 296, 17 L. ed. 538; *Rogers v. Burlington*, 3

tion to corporate stock and a submission of the question to the people is constitutional.⁴⁶³ A municipal subscription to railroad stock made without authority previously conferred may be confirmed by subsequent legislation when the only defect is want of legislative sanction,⁴⁶⁴ but an election and subscription which is absolutely void cannot be validated by any legislative action,⁴⁶⁵ and a bona fide purchaser of such bonds is not protected.⁴⁶⁶

An act authorizing municipal aid to corporations by subscribing to capital stock is not a contract.⁴⁶⁷ So the legislature may prohibit municipal corporations from subscribing to the stock of private corporations,⁴⁶⁸ or may repeal an amendment to a city's charter authorizing such subscription,⁴⁶⁹ or may au-

Wall. 665, 18 L. ed. 79; *St. Joseph Township v. Rogers*, 16 Wall. 663, 21 L. ed. 328; *Railroad Co. v. County of Otoe*, 16 Wall. 673, 21 L. ed. 375; *Township of Pine Grove v. Talcott*, 19 Wall. 676, 22 L. ed. 27; *Harter v. Kernochan*, 103 U. S. 671, 26 L. ed. 411; *Anderson v. Santa Anna*, 116 U. S. 363, 6 S. Ct. 413, 29 L. ed. 633.

⁴⁶³ *Van Hostruck v. Madison City*, 1 Wall. 296, 17 L. ed. 538; *Larned v. Burlington*, 4 Wall. 276, 18 L. ed. 353; *Empire v. Darlington*, 101 U. S. 91, 25 L. ed. 878; *Bates Co. v. Winters*, 112 U. S. 327, 28 L. ed. 744.

⁴⁶⁴ *Grenada Co. v. Brogden*, 112 U. S. 272, 5 S. Ct. 125, 28 L. ed. 704; *Illinois v. Illinois Central R. R.*, 33 Fed. 71; *Erskine v. Steele County*, 97 Fed. 631; *Los Angeles Water Co. v. Los Angeles*, 88 Fed. 743.

⁴⁶⁵ *Marsh v. Fulton County*, 10 Wall. 684, 19 L. ed. 1040; *Lewis v. City of Shreveport*, 108 U. S. 287, 2 S. Ct. 634, 27 L. ed. 728; *Norton v. Shelby County*, 118 U. S. 450, 6 S. Ct. 1121, 30 L. ed. 178; *Wiley v. Silliman*, 62 Ill. 170.

⁴⁶⁶ *Zane v. Hamilton County*, 189 U. S. 370, 23 S. Ct. 538, 47 L. ed. 858.

⁴⁶⁷ *Buffalo etc. R. Co. v. Falconer*, 103 U. S. 821, 26 L. ed. 471; *List v. Wheeling*, 7 W. Va. 501; *Cumberland etc. Ry. Co. v. Barren County Court*, 73 Ky. 604; *Wilson v. Polk County*, 112 Mo. 126, 29 S. W. 469; *Sharpless v. Philadelphia*, 21 Pa. St. 147, 59 Am. Dec. 759.

⁴⁶⁸ *Aspinwall v. Commissioners*, 22 How. 377, 16 L. ed. 296; *Wadsworth v. Supervisors*, 102 U. S. 536, 26 L. ed. 221; *Norton v. Shelby County*, 118 U. S. 452, 6 S. Ct. 1131, 30 L. ed. 178.

⁴⁶⁹ *Covington etc. R. R. v. Kenton*, 12 B. Mon. 144; *List v. Wheeling*, 7 W. Va. 501.

thorize a change in the mode of paying subscriptions,⁴⁷⁰ or may confirm a subscription not made in pursuance of the power conferred,⁴⁷¹ or may provide for the issue of the stock to taxpayers in proportion to their taxes,⁴⁷² or may provide that the filing of the affidavit of consent of taxpayers shall be conclusive evidence of such consent,⁴⁷³ or may provide for the registration and certification of bonds issued in aid of railroads.⁴⁷⁴ A vote of the people authorizing such subscription does not constitute a contract until the subscription is actually made,⁴⁷⁵ but bonds once issued pursuant to a subscription are ever after valid and binding on the body issuing them.⁴⁷⁶

A municipal corporation taking stock in a railroad corporation is to that extent a private corporation, bound as a private individual by its obligation, and its liability is subject to the constitutional inhibition;⁴⁷⁷ and where a municipality has made a contract to subscribe for stock, its bonds to be issued when the road is completed, its contract cannot be impaired by a subsequent constitutional prohibition against municipal aid.⁴⁷⁸ Such prohibitions are prospective only, and do not revoke grants of aid previously made and in force at the time of their

⁴⁷⁰ *Louisville etc. R. R. v. Davidson*, 1 Sneed, 637; *Hunsaker v. Borden*, 5 Cal. 288, 63 Am. Dec. 130.

⁴⁷¹ *City v. Railroad Co.*, 15 Conn. 475; *Bass v. Mayor*, 38 Ga. 875; *McMillan v. Boyles*, 6 Iowa, 304; *Hannibal etc. R. R. v. Marion*, 36 Mo. 294.

⁴⁷² *Commissioners v. Lucas*, 93 U. S. 116, 23 L. ed. 822.

⁴⁷³ *People v. Mitchell*, 45 Barb. 208.

⁴⁷⁴ *Hoff v. Jasper County*, 110 U. S. 53, 3 S. Ct. 476, 28 L. ed. 63.

⁴⁷⁵ *Cumberland & O. Ry. v. Barren County Court*, 73 Ky. 604; *Wilson v. Polk County*, 112 Mo. 126, 20 S. W. 400; *List v. Wheeling*, 7 W. Va. 501.

⁴⁷⁶ *Lee v. Rogers*, 7 Wall. 181, 19 L. ed. 160; *Lansing v. Muscatine County*, 2 Abb. U. S. 59. And see *Butz v. City of Muscatine*, 8 Wall. 585, 19 L. ed. 490.

⁴⁷⁷ *Broughton v. Pensacola*, 93 U. S. 269, 23 L. ed. 896; *Port of Mobile v. Watson*, 116 U. S. 305, 6 S. Ct. 405, 29 L. ed. 620.

⁴⁷⁸ *County of Moultrie v. Savings Bank*, 92 U. S. 635, 23 L. ed. 631; *County of Clay v. Society for Savings*, 104 U. S. 590, 26 L. ed. 856; *County of Moultrie v. Fairfield*, 105 U. S. 375, 26 L. ed. 945; *Jonesboro v. Cairo etc. R. R.*, 110 U. S. 197, 4 S. Ct. 67, 28 L. ed. 116.

adoption.⁴⁷⁹ So where the vote on a subscription to corporate stock was had and the subscription made prior to the adoption of the prohibitory clause the old constitution must govern.⁴⁸⁰ Where, however, the subscription is *ultra vires*, it creates no valid contract rights which are impaired by the prohibitory amendment.⁴⁸¹

— **Contracts Relating to Public Utilities and Improvements.**

A franchise granted by a municipal corporation to a street railway company to use the streets of the city is a contract within the protection of the constitution,⁴⁸² and the acceptance of the terms of an ordinance by a corporation, followed by the expenditure of large sums of money on the faith of it, gives the corporation contract rights which the legislature cannot impair.⁴⁸³ The rule applies as well to franchises to erect and maintain telephone or telegraph lines,⁴⁸⁴ or to lay pipes in city streets.⁴⁸⁵ Such franchises, when accepted, are in the nature

⁴⁷⁹ *Scotland County v. Thomas*, 94 U. S. 688, 24 L. ed. 219; *County of Macon v. Shores*, 97 U. S. 278, 24 L. ed. 889; *County of Ray v. Van Sytle*, 96 U. S. 684, 24 L. ed. 800; *Louisiana v. Taylor*, 105 U. S. 458, 26 L. ed. 1133; *State v. Lancaster County*, 6 Neb. 214; *Indiana County v. Agricultural Society*, 85 Pa. St. 359; *Town of Cherry Creek v. Becker*, 123 N. Y. 161, 25 N. E. 369; *Bound v. Wisconsin Cent. R. R.*, 45 Wis. 543.

⁴⁸⁰ *Decker v. Hughes*, 63 Ill. 33.

⁴⁸¹ *Buffalo etc. R. R. v. Falconer*, 103 U. S. 826, 26 L. ed. 471.

⁴⁸² *Birmingham etc. St. Ry. v. Birmingham St. Ry.*, 79 Ala. 465, 58 Am. Rep. 615; *East Louisiana R. Co. v. New Orleans*, 46 La. Ann. 526, 15 South. 157; *Springfield Ry. Co. v. Springfield*, 85 Mo. 674.

⁴⁸³ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 700, 4 L. ed. 629; *Citizens' St. Ry. Co. v. City Ry. Co.*, 56 Fed. 746; *People v. Chicago West. Div. Ry. Co.*, 18 Ill. App. 125; *Hovelman v. Kansas City Horse Ry.*, 79 Mo. 632; *State ex rel. v. Corrigan etc. Ry. Co.*, 85 Mo. 263, 55 Am. Rep. 361.

⁴⁸⁴ *St. Louis v. Western Union Tel. Co.*, 148 U. S. 103, 13 S. Ct. 485, 37 L. ed. 380; *Sunset Telephone & Telegraph Co. v. Medford*, 115 Fed. 202; *City of New Orleans v. Great Southern etc. Co.*, 40 La. Ann. 41, 3 South. 533; *Michigan Tel. Co. v. St. Joseph*, 121 Mich. 502, 80 Am. St. Rep. 520, 80 N. W. 383.

⁴⁸⁵ *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 9, 19 S. Ct. 77, 43 L. ed. 341; *State v. City of Toledo*, 48 Ohio St. 112, 26 N. E.

of legal estates,⁴⁸⁶ and if valid under the laws of the state at the time they were granted, they cannot be impaired by subsequent legislation or judicial decision.⁴⁸⁷ Where, however, in the grant of authority to cities, the legislature has reserved the right to impose conditions which it deems necessary for the public good, the holder of a franchise may be required to pave certain portions of the streets where its rails are laid.⁴⁸⁸ So, also, there is an implication in all franchises that they shall be held subject to the legislature's police power, and the laying of switches and sidetracks in streets except on certain conditions, may be forbidden,⁴⁸⁹ and telegraph and telephone companies may be required to place their wires in cities underground.⁴⁹⁰

Municipal lighting and water contracts are also within the protection of this clause, and where the conditions of a grant of the right to sell water or light have been complied with it cannot be revoked or impaired.⁴⁹¹ Where, however, nothing has been done toward the erection and operation of a plant under an ordinance there is no contract right which can be impaired by a subsequent act authorizing the city to erect its own plant.⁴⁹² Where, by contract, a city has conferred the ex-

1061, 11 L. R. A. 729; *Little Falls etc. Co. v. City of Little Falls*, 102 Fed. 663.

⁴⁸⁶ *Pennsylvania College Cases*, 13 Wall. 212, 20 L. ed. 550.

⁴⁸⁷ *Chicago v. Sheldon*, 9 Wall. 55, 19 L. ed. 594; *New Orleans etc. R. R. v. Delamore*, 114 U. S. 510, 29 L. ed. 244; *City Ry. v. Citizens' R. R.*, 166 U. S. 567, 17 S. Ct. 653, 41 L. ed. 1114; *Coast Line etc. Co. v. Savannah*, 30 Fed. 650; *St. Louis v. Western Union Tel. Co.*, 63 Fed. 70; *West Chicago etc. R. R. v. Chicago*, 178 Ill. 344, 53 N. E. 114; *Western Paving etc. Co. v. Citizens' etc. R. R.*, 128 Ind. 529, 25 Am. St. Rep. 465, 26 N. E. 190, 10 L. R. A. 770.

⁴⁸⁸ *Sioux City etc. Ry. v. City*, 138 U. S. 98, 11 S. Ct. 226, 34 L. ed. 898, affirming 78 Iowa, 367, 43 N. W. 224; *Coast Line R. R. v. City of Savannah*, 30 Fed. 646.

⁴⁸⁹ *Drady v. Des Moines etc. Ry.*, 57 Iowa, 393, 10 N. W. 754.

⁴⁹⁰ *People v. Squires*, 1 N. Y. St. Rep. 633.

⁴⁹¹ *Los Angeles v. Los Angeles City Water Co.*, 177 U. S. 583, 20 S. Ct. 736, 44 L. ed. 886; *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 148, 21 S. Ct. 575, 45 L. ed. 788; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 10, 19 S. Ct. 77, 43 L. ed. 341.

⁴⁹² *Capital City Light Co. v. Tallahassee*, 186 U. S. 410, 412, 22 S. Ct. 866, 46 L. ed. 121.

clusive right to furnish it with water from a certain source, there is no constitutional objection to the subsequent incorporation of a company authorized to supply the city with water from another source;⁴⁹³ and though a city and a gas company have legally entered into a lighting contract, the legislature may later authorize the city to erect its own lighting plant.⁴⁹⁴

A city's breach of an exclusive lighting contract is not within the prohibition of the obligation clause; in case of a breach of such a contract a city is liable, like an individual, in damages.⁴⁹⁵ A claim of immunity from legislative control of rates to be charged under a franchise must be established affirmatively; such immunity cannot be presumed,⁴⁹⁶ but where such immunity is shown it cannot be violated, notwithstanding the act complained of may not result in a reduction of income.⁴⁹⁷

The contract of a city for public work, such as the constructing or paving of streets, cannot be impaired by legislative act.⁴⁹⁸ Accordingly where damage to land caused by the opening of a street has been appraised and the appraisal confirmed, the owner has a contract right which cannot be impaired by the repeal of the law authorizing appraisal.⁴⁹⁹ Where, however, a contractor assents to the suspension of a public work, the city has no contract right impaired by the act of the legislature ordering the work stopped.⁵⁰⁰ An act relating to the

⁴⁹³ *Stein v. Bienville Water Supply Co.*, 141 U. S. 80, 11 S. Ct. 892, 35 L. ed. 622; *In re Brooklyn*, 143 N. Y. 614, 38 N. E. 988, 26 L. R. A. 270.

⁴⁹⁴ *Hamilton etc. Gas Co. v. Hamilton*, 146 U. S. 268, 13 S. Ct. 93, 36 L. ed. 963; *Thomas v. Grand Junction*, 13 Colo. App. 88, 36 Pac. 1120.

⁴⁹⁵ *Newport Light Co. v. Newport*, 151 U. S. 540, 14 S. Ct. 429, 38 L. ed. 259.

⁴⁹⁶ *Spring Valley W. W. v. Schottler*, 110 U. S. 355, 4 S. Ct. 48, 28 L. ed. 173; *Covington etc. Co. v. Sanford*, 164 U. S. 578, 17 S. Ct. 198, 41 L. ed. 560.

⁴⁹⁷ *Los Angeles v. Los Angeles City Water Co.*, 177 U. S. 580, 20 S. Ct. 736, 44 L. ed. 886.

⁴⁹⁸ *Goodale v. Fennel*, 27 Ohio St. 426, 22 Am. Rep. 321; *Flewelling v. Proetzel*, 80 Tex. 191, 15 S. W. 1043.

⁴⁹⁹ *People v. City of Buffalo*, 140 N. Y. 300, 37 Am. St. Rep. 563, 35 N. E. 485.

⁵⁰⁰ *Cleveland v. Board of Finance etc.*, 38 N. J. L. 259.

widening of a street and authorizing a reappraisement of the damage done and a new assessment does not impair any contract rights;⁵⁰¹ nor is an act authorizing the assessment of abutting land for the construction of a boulevard an impairment of the act providing for the compensation of owners for land taken.⁵⁰²

— **Municipal Debts and Liabilities.**

The rights of a municipality's creditors acquired under contracts valid when made are protected by the federal constitution.⁵⁰³ So where a judgment has been rendered against a city, the legislature cannot impair its obligation by restricting the power of the city's administrative officers,⁵⁰⁴ and an act prohibiting the levy of taxes to pay a claim against a city is void if it deprives the creditor of every means for the collection of his debt.⁵⁰⁵ A statute providing another and different mode of payment of a municipal warrant for indebtedness other than that provided in the contract is void;⁵⁰⁶ e. g., a requirement that holders of warrants bearing a certain rate of interest surrender them and accept bonds bearing a less rate of interest.⁵⁰⁷ But an act merely imposing conditions which do not impair the creditor's right, such as a requirement that the warrant be registered, is unobjectionable;⁵⁰⁸ but conditions which render the enforcement of a claim less certain, such as a requirement that warrants shall be submitted to the county judge to determine their validity, cannot retroact.⁵⁰⁹ Whether

⁵⁰¹ *Garrison v. City of New York*, 21 Wall. 196, 22 L. ed. 612.

⁵⁰² *Turner v. City of Detroit*, 104 Mich. 326, 62 N. W. 405.

⁵⁰³ *Murray v. Charleston*, 96 U. S. 443, 24 L. ed. 760; *Shreveport v. Cole*, 129 U. S. 42, 9 S. Ct. 210, 32 L. ed. 589; *National Bank v. Sebastian County*, 5 Dill. 416, Fed. Cas. No. 10,040; *Garrett v. City of Memphis*, 5 Fed. 860; *Amy v. City of Galena*, 7 Fed. 163.

⁵⁰⁴ *United States v. Port of Mobile*, 12 Fed. 768; *State v. Cathers*, 25 Neb. 250, 41 N. W. 182; *Munday v. Assessors*, 43 N. J. L. 338; *State v. Butler*, 79 Tenn. 493.

⁵⁰⁵ *Souter v. Madison*, 15 Wis. 30; *Hammond v. Place*, 116 Mich. 628, 72 Am. St. Rep. 543, 74 N. W. 1002.

⁵⁰⁶ *Rose v. Estudillo*, 39 Cal. 270.

⁵⁰⁷ *Brewer v. Otoe County*, 1 Neb. 373.

⁵⁰⁸ *Louisiana v. New Orleans*, 102 U. S. 203, 26 L. ed. 132.

⁵⁰⁹ *McCracken v. Moody*, 33 Ark. 81.

the legislature can require that holders of pre-existing claims shall present them for record within a limited time or be barred has been denied in some states,⁵¹⁰ and affirmed in others.⁵¹¹ Where the audit of claims by a comptroller is merely advisory, the fact that he is precluded from auditing certain claims by ordinance does not impair the obligation of the contract under which they arose.⁵¹²

A statute exempting the property of a municipal corporation from forced sale on execution is merely in affirmance of the common law,⁵¹³ and if no rights have vested under a prior statute authorizing execution, such an exemption is valid. So a statute providing a redemption fund to meet indebtedness may provide for the preference of certain claims.⁵¹⁴ Money accumulated and set apart for the payment of claims cannot be diverted under an act of the legislature authorizing its use for another purpose.⁵¹⁵ Nor can the lien be removed from land pledged for the payment of a claim.⁵¹⁶ The legislature may alter the terms of a municipal charter in respect to service in suits on pre-existing obligations,⁵¹⁷ and it may provide that claims against one municipality shall be paid by another,⁵¹⁸ but it cannot provide that as to pre-existing claims no judgment shall issue against a city.⁵¹⁹ A statute

⁵¹⁰ *Robinson v. Magee*, 9 Cal. 81, 70 Am. Dec. 638; *Priestly v. Watkins*, 62 Miss. 798.

⁵¹¹ *City of Lincoln v. Grant*, 38 Neb. 369, 56 N. W. 995; *Parker v. Buckner*, 67 Tex. 20, 2 S. W. 746.

⁵¹² *St. Paul Gaslight Co. v. St. Paul*, 181 U. S. 150, 21 S. Ct. 575, 45 L. ed. 788.

⁵¹³ *Gilman v. Contra Costa County*, 8 Cal. 52, 68 Am. Dec. 290.

⁵¹⁴ *Harold v. Herrington*, 95 Ala. 395, 11 South. 131; *Younge v. Hall*, 9 Nev. 212. But see *Bleakly v. Williams*, 20 Pitts. L. J. 66.

⁵¹⁵ *Maenhaut v. New Orleans*, 2 Woods, 108, Fed. Cas. No. 8939; *Fazende v. City of Houston*, 34 Fed. 95; *Board of Liquidators v. Municipality*, 6 La. Ann. 21; *Smith v. City of Appleton*, 19 Wis. 463.

⁵¹⁶ *Brooklyn Park Commrs. v. Armstrong*, 45 N. Y. 234, 6 Am. Rep. 70.

⁵¹⁷ *Perkins v. Watertown*, 5 Biss. 320, Fed. Cas. No. 10,991.

⁵¹⁸ *Rader v. S. R. Dist.*, 6 Vroom, 273

⁵¹⁹ *Gabler v. City of Elizabeth*, 42 N. J. L. 79; *Wood v. New York*, 29 N. Y. Super. Ct. 463.

declaring that no judgment rendered on county warrants shall bear interest is valid.⁵²⁰

A municipality cannot, by its own ordinances under the guise of taxation, relieve itself of its obligations;⁵²¹ nor, if it obtain a loan by placing property in the hands of certain trustees as security, can it make a change in the selection of the trustees.⁵²²

— Municipal Bonds.

A statute authorizing a municipal corporation to issue bonds and providing for the levy of a tax to pay them creates a contract,⁵²³ and the authorization of the tax must continue in force during the life of the bonds issued under it.⁵²⁴ Nor can the legislature revoke the incorporation of a municipality so as to defeat the rights of holders of its bonds.⁵²⁵ If a fund is pledged for the redemption of bonds, a subsequent statute cannot authorize its diversion so as to impair the security of the bondholders.⁵²⁶ An act providing for the redemption of

⁵²⁰ *Reed v. Mississippi County*, 69 Ark. 365, 86 Am. St. Rep. 204, 63 S. W. 807.

⁵²¹ *Murray v. Charleston*, 96 U. S. 448, 24 L. ed. 760.

⁵²² *West Savings Fund v. Philadelphia*, 31 Pa. St. 175.

⁵²³ *Maenhaut v. New Orleans*, 2 Woods, 108, Fed. Cas. No. 8939; *Ranger v. New Orleans*, 2 Woods, 128, Fed. Cas. No. 11,564.

⁵²⁴ *Von Hoffman v. Quincy*, 4 Wall. 554, 18 L. ed. 403; *City of Galena v. Amy*, 5 Wall. 709, 18 L. ed. 560; *Riggs v. Johnson County*, 6 Wall. 194, 18 L. ed. 768; *Wolff v. New Orleans*, 103 U. S. 365, 20 L. ed. 395; *Louisiana v. Pilsbury*, 105 U. S. 288, 26 L. ed. 1090; *Balls County Court v. United States*, 105 U. S. 738, 26 L. ed. 1220; *Louisiana v. Police Jury*, 111 U. S. 721, 4 S. Ct. 648, 23 L. ed. 574; *Quincy v. Jackson*, 113 U. S. 338, 5 S. Ct. 544, 28 L. ed. 1001; *Scotland County Court v. United States*, 140 U. S. 47, 11 S. Ct. 697, 35 L. ed. 351; *Port of Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398, 29 L. ed. 620.

⁵²⁵ *Milner v. Pensacola*, 2 Woods, 632, Fed. Cas. No. 9619.

⁵²⁶ *Maenhaut v. City of New Orleans*, 2 Woods, 108, Fed. Cas. No. 8939; *State v. Board of Liquidation*, 40 La. Ann. 398, 4 South. 122; *People v. Woods*, 7 Cal. 579; *People v. Supervisors*, 12 Cal. 300; *People v. Bond*, 10 Cal. 563; *English v. Supervisors*, 10 Cal. 172; *Board v. Fowler*, 19 Cal. 11; *Trustees v. Bailey*, 10 Fla. 112, 81 Am. Dec. 194; *West Savings Fund v. Philadelphia*, 31 Pa. St. 175; *Smith v. City of Appleton*, 19 Wis. 488.

bonds at less than par, and authorizing a loan of the fund if no bonds are tendered for redemption, is void.⁵²⁷ A statute authorizing a municipal corporation to issue bonds does not impair the obligation of the contract contained in a grant of land to individuals by the state,⁵²⁸ and if a statute authorizing the condemnation of land for a park provides that the bonds issued shall be a lien thereon, no subsequent act can provide for a sale of the land free from the lien, although the proceeds are to form a sinking fund for the use of the bondholders.⁵²⁹ An act prohibiting the issue of bonds for any purpose but the one specified is not subject to repeal or amendment.⁵³⁰ A statute cannot compel a party to surrender the evidence of his indebtedness and take another in its place.⁵³¹

Municipal bonds issued by authority of the legislature and upheld as valid by the state supreme court cannot be invalidated either by a subsequent contrary judicial construction or by legislative enactment.⁵³² The rights of bondholders are to be determined by law as judicially construed at the time the bonds were put upon the market,⁵³³ and bonds valid when issued are good in the hands of an assignee, notwithstanding the transfer was made after a contrary decision by the state supreme court.⁵³⁴ The legislature may validate bonds issued under a defect of power,⁵³⁵ unless the issue was absolutely void and incapable of any ratification.⁵³⁶

⁵²⁷ *Goldsmith v. Brown*, 5 Or. 418.

⁵²⁸ *McCoy v. Washington County*, 3 Wall. Jr. 381, 3 Phila. 290, Fed. Cas. No. 8731.

⁵²⁹ *Brooklyn Park v. Armstrong*, 45 N. Y. 234, 6 Am. Rep. 70.

⁵³⁰ *Smith v. Appleton*, 19 Wis. 468.

⁵³¹ *People v. Morse*, 43 Cal. 535; *Rose v. Estudillo*, 39 Cal. 270.

⁵³² *Thomson v. Lee County*, 3 Wall. 331, 18 L. ed. 177; *Taylor v. Ypsilanti*, 105 U. S. 72, 26 L. ed. 1008.

⁵³³ *County of Balls v. Douglass*, 105 U. S. 732, 26 L. ed. 957.

⁵³⁴ *New Buffalo v. Iron Co.*, 105 U. S. 75, 26 L. ed. 1024.

⁵³⁵ *Grenada v. Brogden*, 112 U. S. 272, 5 S. Ct. 125, 28 L. ed. 704; *Illinois v. Illinois Cent. R. R.*, 33 Fed. 71; *Ersine v. Steele County*, 87 Fed. 631; *Los Angeles Water Co. v. Los Angeles*, 88 Fed. 743; *Kunkle v. Franklin*, 13 Minn. 127, 97 Am. Dec. 226; *Commonwealth v. Folsom*, 13 Minn. 219.

⁵³⁶ *Marsh v. Fulton County*, 10 Wall. 684, 19 L. ed. 1040; *Lewis v. City of Shreveport*, 108 U. S. 287, 2 S. Ct. 634, 27 L. ed. 728; *Norton v. Shelby County*, 118 U. S. 450, 6 S. Ct. 1121, 30 L. ed. 178.

Private Corporations.

If the foundation of a corporation is private, the corporation itself is private, notwithstanding it is under charter from the government, and no matter how extensive its uses.⁵³⁷ A corporation may be private and yet its charter may contain provisions of a purely public character,⁵³⁸ and a bounty may be bestowed upon a private as well as a public corporation.⁵³⁹

The character of a corporation is not affected by the fact that it is largely endowed out of lands granted by the federal government,⁵⁴⁰ nor by the fact that it is endowed in part by the state creating it.⁵⁴¹ Where the property of a corporation is private, it is a private corporation;⁵⁴² but where the whole interests and franchises are the exclusive property and domain of the government, it is a public corporation.⁵⁴³ So if an educational institution be founded for public purposes and with public funds, it is public and subject to legislative con-

⁵³⁷ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 629, 4 L. ed. 629; *Louisville v. University*, 15 B. Mon. 669; *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *Trustees v. Bradbury*, 11 Me. 118, 26 Am. Dec. 515; *Yarmouth v. North Yarmouth*, 34 Me. 411, 56 Am. Dec. 666; *People v. Cogswell*, 113 Cal. 139, 45 Pac. 272, 35 L. R. A. 269; *American Asylum etc. v. Phoenix Bank*, 4 Conn. 177, 10 Am. Dec. 113; *State v. Neff*, 52 Ohio St. 404, 40 N. E. 724, 28 L. R. A. 409; *Board of Education v. Bakewell*, 122 Ill. 344, 10 N. E. 381; *Downing v. Board*, 129 Ind. 449, 28 N. E. 125, 12 L. R. A. 664; *Plymouth v. Jackson*, 15 Pa. St. 44; *State v. Heyward*, 3 Rich. 389.

⁵³⁸ *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72.

⁵³⁹ *Allen v. McKean*, 1 Sum. 276; *Louisville v. University*, 15 B. Mon. 642; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *Montgomery Academy v. George*, 14 La. Ann. 395; *Sheriff v. Lowndes*, 16 Md. 357; *Richardson v. Brown*, 6 Me. 355; *Yarmouth v. North Yarmouth*, 34 Me. 411, 56 Am. Dec. 666.

⁵⁴⁰ *University v. Indiana*, 14 How. 276, 14 L. ed. 416.

⁵⁴¹ *Downing v. Board etc.*, 129 Ind. 449, 28 N. E. 125, 12 L. R. A. 664; *Cleveland v. Stewart*, 3 Ga. 291.

⁵⁴² *Piqua State Bank v. Knoop*, 16 How. 369, 6 Ohio St. 342 14 L. ed. 977.

⁵⁴³ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 629, 4 L. ed. 629; *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *University v. Maultsby*, 8 Ired. Eq. 257.

trol;⁵⁴⁴ but a corporation created for the purpose of investing school funds for a town has been held to be a private corporation.⁵⁴⁵

Although created by the state, a bank whose stock is owned by private persons is a private corporation, and its charter protected by the obligation clause;⁵⁴⁶ but it has been held that a bank operated exclusively by the state is public, and may be discontinued by the state at its option.⁵⁴⁷ A bank charter may be forfeited for the nonuser of its franchises.⁵⁴⁸ Railroad corporations are uniformly held to be private although their uses are essentially public,⁵⁴⁹ and their character is unaffected by the fact that they are held to serve a public use for the purpose of the exercise of the right of eminent domain in their behalf,⁵⁵⁰ or for the purpose of extending public aid.⁵⁵¹ Canal companies are of the same nature,⁵⁵² as also are corporations

⁵⁴⁴ *Dart v. Houston*, 22 Ga. 529; *University of Michigan v. Board of Education*, 4 Mich. 225; *State v. Knowles*, 16 Fla. 616; *Regents v. McConnell*, 5 Neb. 427; *Wambersie v. Orange etc. Society*, 84 Va. 453, 5 S. E. 28; *Spaulding v. People*, 172 Ill. 48, 49 N. E. 995. But see *State v. Carr*, 111 Ind. 337, 12 N. E. 319.

⁵⁴⁵ *Trustees v. Bradbury*, 11 Me. 118, 26 Am. Dec. 515.

⁵⁴⁶ *State Bank of Ohio v. Knoop*, 16 How. 380, 14 L. ed. 977, reversing 1 Ohio St. 618.

⁵⁴⁷ *State v. State Bank of South Carolina*, 1 S. C. 67; *State v. Curran*, 12 Ark. 353; *Branch Bank v. Collins*, 7 Ala. 101.

⁵⁴⁸ *State v. Bank of South Carolina*, 1 Spears, 502; *Logwood v. Planters' Bank*, Minor, 24.

⁵⁴⁹ *Adams v. Boston etc. R. R.*, 1 Holmes, 31, Fed. Cas. No. 47; *Sweatt v. Boston etc. R. R.*, 3 Cliff. 346, Fed. Cas. No. 13,684; *Burhop v. Milwaukee*, 21 Wis. 260; *Hale v. County Commissioners*, 137 Mass. 114.

⁵⁵⁰ *Bonaparte v. Camden etc. R. R.*, 1 Baldw. 220, Fed. Cas. No. 1617; *Bloodgood v. Mohawk etc. R. R.*, 18 Wend. 51, 21 Am. Dec. 348.

⁵⁵¹ *Van Hostruck v. Madison City*, 1 Wall. 296, 17 L. ed. 538; *Rogers v. Burlington*, 3 Wall. 665, 18 L. ed. 79; *Railroad Co. v. County of Otoe*, 16 Wall. 673, 21 L. ed. 375; *Anderson v. Santa Anna*, 116 U. S. 363, 6 S. Ct. 413, 29 L. ed. 633.

⁵⁵² *Rundle v. Delaware etc. Canal*, 1 Wall. Jr. 291, Fed. Cas. No. 12,139; *Hooker v. New Haven etc. Co.*, 15 Conn. 322. And see *Taylor v. Griswold*, 14 N. J. L. 234, 27 Am. Dec. 43.

engaged in slaughtering livestock,⁵⁵³ industrial, mining and manufacturing corporations.⁵⁵⁴ A home for inebriates established by private benefaction is a private corporation although supported in part by the state.⁵⁵⁵

— Nature of Corporate Charter and Extent of Legislative Power.

The charter of a private corporation is a contract, which the state, under the inhibition of the constitution, cannot impair.⁵⁵⁶ It is in effect a stipulation that the powers specially granted are not to be withdrawn or diminished.⁵⁵⁷

Certain powers are to be implied from those specially given,⁵⁵⁸ and powers thus reasonably implied are as sacred as those expressly given.⁵⁵⁹ Private charters are contracts be-

⁵⁵³ Putnam v. Buch, 56 Fed. 418.

⁵⁵⁴ Wolfe v. Underwood, 91 Ala. 526, 8 South. 775.

⁵⁵⁵ Washington Home v. Chicago, 157 Ill. 423, 41 N. E. 895, 29 L. R. A. 798.

⁵⁵⁶ Trustees Dartmouth College v. Woodward, 4 Wheat. 627, 641, 657, 4 L. ed. 629; West River Bridge Co. v. Dix, 6 How. 531, 12 L. ed. 535; Bridge Props. v. Hoboken Co., 1 Wall. 146, 17 L. ed. 571; Miller v. State, 15 Wall. 488, 21 L. ed. 98; The Delaware Railroad Tax, 18 Wall. 225, 21 L. ed. 888; Chicago etc. R. R. v. Iowa, 94 U. S. 161, 24 L. ed. 94; Edwards v. Kearzey, 96 U. S. 607, 24 L. ed. 793; Fletcher v. Peck, 6 Cr. 87, 3 L. ed. 162; Terrett v. Taylor, 9 Cr. 43, 3 L. ed. 650; Town of Pawlet v. Clark, 9 Cr. 292, 3 L. ed. 735; Piqua Bank v. Knoop, 16 How. 369, 14 L. ed. 977; Dodge v. Woolsey, 18 How. 331, 15 L. ed. 401; Mechanics' and Traders' Bank v. Debolt, 18 How. 380, 15 L. ed. 458; Jefferson etc. Bank v. Skelly, 1 Black. 436, 17 L. ed. 173; San Francisco v. Spring Valley Waterworks, 48 Cal. 520; Washington Br. Co. v. State, 18 Conn. 64; Bruffett v. Great Western R. R. Co., 25 Ill. 312; Martindale v. Moore, 3 Blackf. 280; Atlantic R. R. v. Mingus, 7 N. Mex. 371, 34 Pac. 595; Matter of City of Brooklyn, 143 N. Y. 609, 38 N. E. 986, 26 L. R. A. 270; University v. North Carolina R. R., 76 N. C. 108, 22 Am. Rep. 674; Central R. R. v. Collins, 40 Ga. 624; State Board of Assessors v. Paterson etc. R. R. Co., 50 N. J. L. 450, 14 Atl. 612; President etc. v. Trenton City Bridge Co., 13 N. J. Eq. 49; People v. O'Brien, 111 N. Y. 49, 7 Am. St. Rep. 702, 18 N. E. 702, 2 L. R. A. 255; Brighton v. Wilkinson, 2 Allen, 29; Crease v. Babcock, 23 Pick. 340, 34 Am. Dec. 63; Mathews v. St. Louis & S. F. Ry., 121 Mo. 310, 24 S. W. 594, 25 L. R. A. 161; Michigan State Bank v. Hastings, 1 Doug. 225, 41 Am. Dec. 549; Mayor v. Baltimore etc. R. R., 6 Gill,

cause based for consideration upon the liabilities and duties which the incorporators assume by acceptance.⁵⁶⁰ The consideration may be said to be the benefit derived by the community from the incorporation,⁵⁶¹ and of its sufficiency the legislature is the exclusive judge.⁵⁶² No other consideration is necessary to render the grant irrevocable.^{562a}

The obligation of such charters on the part of the incorporators is that of performing the functions for which they are created.⁵⁶³ A corporate charter, like any other grant by the state, is to be strictly construed in favor of the public;⁵⁶⁴ nothing can be taken by intendment against the state.⁵⁶⁵ So where the right under a charter is claimed by construction, only the scope and evident design of all of the provisions of the charter

238, 48 Am. Dec. 531; *Kellum v. State*, 66 Ind. 577; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *Derby Turnpike Co. v. Parks*, 10 Conn. 522, 27 Am. Dec. 700.

⁵⁵⁷ *Commonwealth v. Farmers' Bank*, 38 Mass. 542, 32 Am. Dec. 290; *Thorpe v. Burlington etc. R. R.*, 27 Vt. 140, 62 Am. Dec. 625.

⁵⁵⁸ *Payne v. Baldwin*, 11 Miss. 661; *Commercial Bank v. State*, 12 Miss. 439.

⁵⁵⁹ *Commercial Bank v. State*, 12 Miss. 439; *People v. Manhattan, Co.*, 9 Wend. 351.

⁵⁶⁰ *Pennsylvania College Cases*, 13 Wall. 214, 20 L. ed. 550.

⁵⁶¹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 658, 4 L. ed. 629; *Home of the Friendless v. Rouse*, 8 Wall. 430, 19 L. ed. 495; *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72.

⁵⁶² *Piqua Bank v. Knoop*, 16 How. 369, 14 L. ed. 977.

^{562a} *Derby Turnpike Co. v. Parks*, 10 Conn. 522, 27 Am. Dec. 700.

⁵⁶³ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 658, 688, 4 L. ed. 629; *Swift v. Richardson*, 7 Houst. 355, 32 Atl. 144; *Illinois etc. R. R. v. Bentley*, 64 Ill. 441.

⁵⁶⁴ *Railway v. Philadelphia*, 101 U. S. 540, 25 L. ed. 912.

⁵⁶⁵ *Charles River Br. v. Warren Br.*, 11 Pet. 544, 9 L. ed. 773; *Jefferson Branch Bank v. Skelly*, 1 Black, 446, 17 L. ed. 173; *The Binghamton Br.*, 3 Wall. 75, 18 L. ed. 137; *Stein v. Bienville Water Co.*, 141 U. S. 81, 11 S. Ct. 896, 35 L. ed. 622; *Coosaw Min. Co. v. South Carolina*, 144 U. S. 562, 12 S. Ct. 691, 36 L. ed. 537; *Covington etc. Co. v. Sandford*, 164 U. S. 588, 17 S. Ct. 202, 41 L. ed. 560; *Parrott v. Lawrence*, 2 Dill. 537, Fed. Cas. No. 10,772; *Louisville Trust Co. v. Cincinnati*, 73 Fed. 726; *Bartholomew v. Austin*, 85 Fed. 364.

can be considered,⁵⁶⁶ and where the charter is susceptible of two meanings, that which is least detrimental to the state will be adopted.⁵⁶⁷

The exercise of rights under a charter, being restrictive of individual rights, it cannot be extended beyond the letter and spirit of the act of incorporation.⁵⁶⁸

A corporate franchise, granted to and accepted by a private corporation, is in the nature of a legal estate and a contract within the obligation clause of the constitution.⁵⁶⁹ The grant of a franchise is not distinguishable from a grant of any other property,⁵⁷⁰ and an ordinance which amounts to a proposition to grant a franchise in consideration of the construction or operation of a street railroad, or to lay gas or water pipes in streets, is a contract unimpaired by the state;⁵⁷¹ such a franchise having been granted to one railroad cannot be in ef-

⁵⁶⁶ *Maysville T. Co. v. How*, 14 B. Mon. 26.

⁵⁶⁷ *The Binghamton Br.*, 3 Wall. 75, 18 L. ed. 137.

⁵⁶⁸ *Providence Bank v. Billings*, 4 Pet. 514, 7 L. ed. 939; *Charles River Br. v. Warren Br.*, 11 Pet. 420, 9 L. ed. 773; *Mills v. St. Clair Co.*, 8 How. 569, 12 L. ed. 1201; *Planters' Bank v. Sharp*, 6 How. 301, 12 L. ed. 447; *Ohio Trust Co. v. Debolt*, 16 How. 416, 14 L. ed. 997; *Richmond R. R. Co. v. Louisa R. R. Co.*, 13 How. 71, 14 L. ed. 55; *Enfield Br. Co. v. Connecticut River Co.*, 7 Conn. 28; *Hartford Br. Co. v. East Hartford*, 16 Conn. 149; *Hartford Br. Co. v. Union Ferry Co.*, 29 Conn. 210; *McLeod v. Burroughs*, 9 Ga. 213; *Turnpike Co. v. Railroad Co.*, 10 Gill & J. 392; *Tuckahoe Canal Co. v. Railroad*, 11 Leigh, 42, 36 Am. Dec. 374; *Collins v. Sherman*, 31 Miss. 679.

⁵⁶⁹ *Pennsylvania College Cases*, 13 Wall. 212, 20 L. ed. 550; *New Orleans etc. R. R. v. Delamore*, 114 U. S. 510, 29 L. ed. 244; *St. Louis v. Western Union Tel. Co.*, 148 U. S. 103, 13 S. Ct. 485, 37 L. ed. 380; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 9, 19 S. Ct. 77, 43 L. ed. 341.

⁵⁷⁰ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 700, 4 L. ed. 629; *Society for Savings v. Coite*, 6 Wall. 606, 18 L. ed. 897; *Benson v. New York*, 10 Barb. 223; *Enfield Bridge Co. v. Connecticut Riv. Co.*, 7 Conn. 28; *Derby Turnpike Co. v. Parks*, 10 Conn. 28, 27 Am. Dec. 700; *Washington Bridge Co. v. State*, 18 Conn. 53; *Canal Co. v. Railroad Co.*, 4 Gill & J. 1.

⁵⁷¹ *City Railway v. Citizens' Railroad*, 166 U. S. 567, 17 S. Ct. 653, 41 L. ed. 1114; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 9, 19 S. Ct. 77, 43 L. ed. 341.

fect repealed by a subsequent grant of the same privilege to another corporation.⁵⁷²

Exclusive rights granted to corporations inconsistent with the new government may, however, be abolished.⁵⁷³ Accordingly the exclusive right granted to a turnpike company to erect and maintain a toll bridge was not impaired by a grant of a right seventy years later to a railroad company to erect a railroad bridge.⁵⁷⁴ A statute forbidding the erection of a bridge near one already built gives no contract rights to the owners of the latter, and may be repealed notwithstanding its purchase on the faith of such statute,⁵⁷⁵ nor is a ferry license granted under general law, prohibiting the grant of a license for a ferry within half a mile of any other ferry, a contract impaired by a special law granting a license for a ferry within that limit.⁵⁷⁶

Where a corporation is to be brought into existence by some future act of the incorporators, the franchises remain in abeyance and attach when such acts are done.⁵⁷⁷

— Extent of Legislative Authority.

Corporations are impliedly subject to such reasonable regulations as the legislature may from time to time prescribe, not interfering with the substantial enjoyment of privileges conferred and serving only to secure the ends for which the corporations were created;⁵⁷⁸ a corporation always impliedly subjects itself to reasonable regulations in the conduct of its af-

⁵⁷² *New Orleans etc. R. R. v. Delamore*, 114 U. S. 510, 5 S. Ct. 1009, 29 L. ed. 244.

⁵⁷³ *Terrett v. Taylor*, 9 Cr. 52, 3 L. ed. 650.

⁵⁷⁴ *Bridge Proprietors v. Hoboken Co.*, 1 Wall. 147, 17 L. ed. 571.

⁵⁷⁵ *Wheeling etc. Bridge Co. v. Wheeling Bridge Co.*, 138 U. S. 692, 11 S. Ct. 301, 34 L. ed. 967.

⁵⁷⁶ *Williams v. Wingo*, 171 U. S. 604, 20 S. Ct. 793, 44 L. ed. 905.

⁵⁷⁷ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 691, 4 L. ed. 629; *Vincennes University v. State*, 14 How. 275, 14 L. ed. 416; *Williams v. State*, 23 Tex. 287; *Huff v. Winona etc. R. R. Co.*, 11 Minn. 192.

⁵⁷⁸ *Chicago Life Ins. Co. v. Needles*, 113 U. S. 580, 5 S. Ct. 681, 28 L. ed. 1084; *Wabash etc. Ry. v. Illinois*, 118 U. S. 569, 7 S. Ct. 4, 30 L. ed. 244.

fairs.⁵⁷⁹ The legislature has the same right of general control over corporations that it has over natural persons.⁵⁸⁰ While a general law for the organization of corporations is a special act as to each corporation organized under it,⁵⁸¹ yet provisions in acts of incorporation which are of general law and not of contract may be repealed or modified,⁵⁸² and in the absence of express charter provision the state may prescribe the future liabilities of its corporations.⁵⁸³ The legislature may require corporations to make annual reports,⁵⁸⁴ or may require a certain proportion of its officers to reside in the state,⁵⁸⁵ or may change the mode of assessing corporate property.⁵⁸⁶

A corporation which is a mere instrument or agent of the state is subject to legislative control;⁵⁸⁷ but the legislature cannot subject a corporation to forfeiture of its franchises for any cause not sufficient when such corporation was organized.⁵⁸⁸ A state may revive a corporation and legalize con-

⁵⁷⁹ *Eagle Ins. Co. v. Ohio*, 153 U. S. 455, 14 S. Ct. 868, 38 L. ed. 778.

⁵⁸⁰ *Benson v. New York*, 10 Barb. 223; *Galena etc. R. R. Co. v. Loomis*, 13 Ill. 548, 56 Am. Dec. 471; *Ohio etc. R. R. v. McClelland*, 25 Ill. 140; *Fertilizing Co. v. Hyde Park*, 70 Ill. 634; *New Albany etc. R. R. v. Tilton*, 12 Ind. 3, 74 Am. Dec. 195; *Gorman v. Pacific R. R.*, 26 Mo. 441, 72 Am. Dec. 220; *Burlington etc. R. R. v. State*, 32 N. H. 215; *State v. Matthews*, 3 Jones N. C. 451; *Thorpe v. Rutland etc. R. R. Co.*, 27 Vt. 140, 62 Am. Dec. 625.

⁵⁸¹ *Piqua Bank v. Knoop*, 16 How. 369, 14 L. ed. 977, 6 Ohio St. 342.

⁵⁸² *People v. Cook*, 148 U. S. 408, 13 S. Ct. 645, 37 L. ed. 498.

⁵⁸³ *Missouri etc. Ry. v. Mackey*, 127 U. S. 208, 8 S. Ct. 1161, 32 L. ed. 107; *Orient Ins. Co. v. Daggs*, 172 U. S. 566, 19 S. Ct. 564, 43 L. ed. 552; *State v. Brown etc. Mfg. Co.*, 18 B. L. 20, 25 Atl. 248, 17 L. B. A. 856.

⁵⁸⁴ *State v. Southern Pacific R. R.*, 24 Tex. 80.

⁵⁸⁵ *State v. Southern Pacific R. R.*, 24 Tex. 80.

⁵⁸⁶ *Bank v. Hamilton*, 21 Ill. 33.

⁵⁸⁷ *Louisville v. University*, 15 B. Mon. 642; *Lincoln Bank v. Richardson*, 1 Me. 79, 10 Am. Dec. 34; *Bleakney v. Farmers' Bank*, 17 Serg. & R. 64, 17 Am. Dec. 635; *Officer v. Young*, 5 Yerg. 330, 26 Am. Dec. 268.

⁵⁸⁸ *State v. Tombeckbee Bank*, 2 Stew. 30.

tracts made by it after the forfeiture of its charter, or it may transfer the property of an insolvent corporation to a new one,⁵⁸⁹ and may provide for a receiver upon the dissolution of a corporation.⁵⁹⁰

The dissolution of a corporation, and the assignment of its property, do not impair the corporate contracts or defeat judgment creditors' equitable right to satisfaction out of the corporate property.⁵⁹¹

An act which impairs the charter by enlarging the powers of the state over the body corporate, or by abridging the franchise, or by altering the charter, is void.⁵⁹² An act passed after the grant of the charter, annexing a cause of forfeiture unknown to the charter, impairs its obligation and is void.⁵⁹³ The grant of an annual appropriation in a charter, in consideration of subscriptions by private individuals, is a valid contract and cannot be repealed.⁵⁹⁴ If the charter allows a reasonable time to comply with the conditions whereby a corporation may obtain an interest in land, the legislature cannot shorten that time or impose any liability if it choose to avail itself of all the time allowed.⁵⁹⁵

The right of a corporation to regulate its own charges and

⁵⁸⁹ *Mudge v. Commissioners*, 10 Rob. (La.) 460.

⁵⁹⁰ *Carey v. Giles*, 9 Ga. 253; *Searcey v. Stubbs*, 12 Ga. 437; *Hall v. Carey*, 5 Ga. 253; *Aurora T. Co. v. Holthouse*, 7 Ind. 59; *Read v. Frankfort Bank*, 23 Me. 318; *Savings Institution v. Maken*, 23 Me. 360; *Leathers v. Shipbuilders' Bank*, 40 Me. 386; *Nevitt v. Bank*, 14 Miss. 513; *Suydam v. Receivers*, 3 N. J. Eq. 313; *Bank of Columbia v. Attorney General*, 3 Wend. 588.

⁵⁹¹ *Mumma v. Potomac Co.*, 8 Pet. 286, 8 L. ed. 945; *Curran v. Arkansas*, 15 How. 308, 14 L. ed. 705; *Bacon v. Robertson*, 18 How. 486, 15 L. ed. 499; *Chicago etc. R. R. v. Howard*, 7 Wall. 410, 19 L. ed. 117; *Mellen v. Moline Iron Works*, 131 U. S. 366, 9 S. Ct. 785, 33 L. Ed. 178; *Hayden v. Thompson*, 71 Fed. 63.

⁵⁹² *Philadelphia etc. R. R. v. Bowers*, 4 Houst. 506; *Commercial Bank v. State*, 12 Miss. 439.

⁵⁹³ *Washington Bridge Co. v. State*, 18 Conn. 53; *People v. Plankroad Co.*, 9 Mich. 285; *Aurora T. Co. v. Holthouse*, 7 Ind. 59; *State v. Tombeckbee Bank*, 2 Stew. 30.

⁵⁹⁴ *Visitors v. State*, 15 Md. 330.

⁵⁹⁵ *Nichols v. S. & K. R. R. Co.*, 43 Me. 356.

tolls may be given by charter in such terms as to constitute a contract which the legislature cannot impair;⁵⁹⁶ but a claim of immunity from legislative control of tolls and charges to be exacted is subject to the same principles of construction as a grant of immunity from taxation, and will never be presumed.⁵⁹⁷ The power of the state to limit the amount of charges by quasi-public corporations is a governmental power, and cannot be bargained away except by words of positive grant or their equivalent.⁵⁹⁸ The simple grant of a right to take tolls does not amount to a contract that the state shall thereafter refrain from regulating the tolls to be taken,⁵⁹⁹ nor does a provision that rates to be charged shall never exceed a certain figure amount to a contract by the state with the corporation that the legal rate shall never be reduced below that amount.⁶⁰⁰ Even where a charter gives the absolute right to regulate charges, the state may empower a commission to see that the corporation keeps within its charter powers and to prevent unjust discrimination.⁶⁰¹ A charter authorizing the directors to "adopt and establish such a tariff of charges as they may

⁵⁹⁶ *Los Angeles v. Los Angeles City Water Co.*, 177 U. S. 580, 20 S. Ct. 736, 44 L. ed. 886; *Santa Ana Water Co. v. Town of San Buenaventura*, 65 Fed. 339; *Cleveland Gaslight etc. Co. v. Cleveland*, 71 Fed. 610; *State v. Laclede Gas Co.*, 102 Mo. 472, 22 Am. St. Rep. 789, 14 S. W. 974; *Philadelphia etc. Ry. Co. v. Bowers*, 4 Houst. 506; *Hamilton v. Keith*, 68 Ky. 458; *Attorney General v. Chicago etc. Ry. Co.*, 35 Wis. 425.

⁵⁹⁷ *Covington etc. Co. v. Sandford*, 164 U. S. 578, 17 S. Ct. 193, 41 L. ed. 560.

⁵⁹⁸ *Stone v. Farmers' Loan & Trust Co.*, 116 U. S. 325, 6 S. Ct. 334, 29 L. ed. 636; *Winchester etc. Road Co. v. Croxton*, 98 Ky. 744, 34 S. W. 520; *State v. Cleveland Gaslight Co.*, 3 Ohio C. C. 254; *Burlington etc. Ry. Co. v. Dey*, 82 Iowa, 312, 31 Am. St. Rep. 477, 48 N. W. 98, 12 L. R. A. 436; *Blake v. Winona etc. R. R. Co.*, 19 Minn. 418, 18 Am. Rep. 345.

⁵⁹⁹ *Chicago etc. Ry. v. Minnesota*, 134 U. S. 418, 10 S. Ct. 462, 33 L. ed. 970; *Minneapolis etc. Ry. v. Minnesota*, 134 U. S. 467, 10 S. Ct. 473, 33 L. ed. 985; *Ruggles v. People*, 91 Ill. 256; *Blake v. Winona etc. R. R.*, 19 Minn. 418, 18 Am. Rep. 345.

⁶⁰⁰ *Georgia B. R. etc. Co. v. Smith*, 128 U. S. 174, 9 S. Ct. 47, 32 L. ed. 377; *Winchester etc. Road Co. v. Croxton*, 98 Ky. 739, 34 S. W. 518; *Dow v. Beidelman*, 49 Ark. 325, 5 S. W. 297.

⁶⁰¹ *Stone v. Yazoo etc. R. R. Co.*, 62 Miss. 607, 52 Am. Rep. 193.

think proper and the same to alter and change at pleasure," is not an adequate surrender of the state's right of control.⁶⁰² Power given to a corporation to charge "such reasonable rates as may be from time to time fixed by such corporation, or prescribed by law," is not a contract power excluding all regulation by the legislature,⁶⁰³ and a proviso that a corporation "may make such by-laws as may be expedient, not repugnant to the laws of the state," includes laws thereafter to be passed.⁶⁰⁴ Where the charter itself, or the state constitution in force when the charter was granted, reserves to the legislature power to alter or repeal there can be no question of the legislative power over rates notwithstanding the other terms of the charter,⁶⁰⁵ and the fact that the legislature does not exercise this reserved power for twenty years after granting the charter does not impair the power; the powers of government cannot be lost by nonuser.⁶⁰⁶ Where the charter of a turnpike company authorizes it to collect toll from all persons without exception, a subsequent act exempting certain classes is unconstitutional.⁶⁰⁷

The legislature cannot contravene any of the positive provisions of a corporate charter,⁶⁰⁸ nor can it impair rights thereunder unless it provides indemnity.⁶⁰⁹ Any variation in the grant of a franchise violates a contractual obligation,⁶¹⁰ but mere endowments of existence are not contractual; they are

⁶⁰² *Stone v. Illinois Cent. Ry. Co.*, 116 U. S. 347, 6 S. Ct. 348, 29 L. ed. 650.

⁶⁰³ *Chicago etc. Ry. v. Minnesota*, 134 U. S. 455, 10 S. Ct. 462, 35 L. ed. 970; *Cotting v. Kansas City Stockyard Co.*, 79 Fed. 682; *Wellman v. Chicago etc. Ry.*, 83 Mich. 611, 47 N. W. 494.

⁶⁰⁴ *Chicago etc. Ry. Co. v. Jones*, 149 Ill. 361, 41 Am. St. Rep. 278, 37 N. E. 247, 24 L. R. A. 141.

⁶⁰⁵ *Peik v. Chicago etc. Ry.*, 94 U. S. 176, 24 L. ed. 97; *Railroad Commission Cases*, 116 U. S. 325, 6 S. Ct. 342, 29 L. ed. 636.

⁶⁰⁶ *Chicago etc. Ry. v. Iowa*, 94 U. S. 162, 24 L. ed. 94.

⁶⁰⁷ *Hartman v. Bechtel*, 1 Woodw. Dec. 32; *Philadelphia etc. Co. v. Gartland*, 6 Phila. 128; *Pingry v. Washburn*, 1 Aik. 264, 15 Am. Dec. 676.

⁶⁰⁸ *State v. Noyes*, 47 Me. 189.

⁶⁰⁹ *Enfield Br. Co. v. Connecticut River Co.*, 7 Conn. 28.

⁶¹⁰ *Enfield Bridge Co. v. Connecticut River Co.*, 7 Conn. 28.

held subject to the legislative power to modify or revoke.⁶¹¹ The legislature may reserve the right to amend, alter or repeal a franchise.⁶¹² The right to withdraw a franchise includes every power or privilege which is a part of the franchise.⁶¹³

— Construction of Powers Granted.

Any privileges which may exempt a corporation from the burdens common to individuals do not flow necessarily from the charter, but must be expressed in it or they do not exist,⁶¹⁴ and while it is true that in construing a charter the court must carry out the intention of the legislature,⁶¹⁵ and sustain the charter where there is no ambiguity in the language used,⁶¹⁶ yet where there is any uncertainty as to the legislative intention the doubt is to be resolved in favor of the state.⁶¹⁷ This is especially true where the right claimed under the charter tends to impair the state's power to exercise its ordi-

⁶¹¹ *Bank v. Hamilton*, 21 Ill. 53.

⁶¹² *Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989; *Peik v. Chicago etc. R. R.*, 6 Biss. 181, Fed. Cas. No. 11,138; *Griffin v. Kentucky Ins. Co.*, 3 Bush, 592, 96 Am. Dec. 259; *Commonwealth v. Fayette Co. R. R. Co.*, 55 Pa. St. 452; *Butler v. Walker*, 80 Ill. 345; *Trustees v. Winston*, 5 Stew. & P. 17.

⁶¹³ *Central R. R. & B. Co. v. Georgia*, 54 Ga. 420.

⁶¹⁴ *Providence Bank v. Billings*, 4 Pet. 562, 7 L. ed. 939; *Bank v. Hamilton*, 21 Ill. 53; *Peters v. Railroad Co.*, 23 Mo. 107; *Thorpe v. Rutland etc. R. R. Co.*, 27 Vt. 140, 62 Am. Dec. 625.

⁶¹⁵ *Washington University v. Rouse*, 8 Wall. 440, 19 L. ed. 498; *James v. Milwaukee*, 16 Wall. 161, 21 L. ed. 267; *New Orleans v. Houston*, 119 U. S. 278, 7 S. Ct. 198, 30 L. ed. 411; *Lewis v. Shreveport*, 3 Woods, 212, Fed. Cas. No. 8331.

⁶¹⁶ *The Binghamton Bridge*, 3 Wall. 75-80, 18 L. ed. 137; *Ruggles v. Illinois*, 108 U. S. 534, 2 S. Ct. 832, 27 L. ed. 812; *Johnson v. State*, 88 Ala. 180, 7 South. 254; *Grant v. Leach*, 20 La. Ann. 331, 96 Am. Dec. 406.

⁶¹⁷ *The Binghamton Bridge*, 3 Wall. 75, 18 L. ed. 137; *Stein v. Bienville Water Supply Co.*, 141 U. S. 81, 11 S. Ct. 896, 35 L. ed. 622; *Coosaw Min. Co. v. South Carolina*, 144 U. S. 562, 12 S. Ct. 691, 36 L. ed. 537; *Louisville etc. R. R. Co. v. Kentucky*, 161 U. S. 685, 16 S. Ct. 714, 40 L. ed. 849; *Covington etc. Turnpike Co. v. Sandford*, 164 U. S. 588, 17 S. Ct. 202, 41 L. ed. 580; *Parrott v. Lawrence*, 2 Dill. 337, Fed. Cas. No. 10,772; *Superior v. Norton*, 63 Fed. 359; *Bartholomew v. Austin*, 85 Fed. 364.

nary governmental functions.⁶¹⁸ Accordingly the relinquishment of any sovereign power must be plain and unequivocal; it is never to be presumed.⁶¹⁹

The state grant of a charter is a contract; but all contracts are made subject to the right of eminent domain,⁶²⁰ and the

⁶¹⁸ *Charles River Bridge v. Warren Bridge*, 11 Pet. 544, 9 L. ed. 773; *Ohio Life Ins. Co. v. Debolt*, 16 How. 435, 14 L. ed. 797; *Curtis v. County of Butler*, 24 How. 448, 16 L. ed. 745; *Pearsall v. Great Northern Ry. Co.*, 161 U. S. 664, 16 S. Ct. 705, 40 L. ed. 838; *New Orleans v. Texas etc. Ry. Co.*, 171 U. S. 343, 18 S. Ct. 875, 18 L. ed. 178; *Minneapolis etc. Ry. Co. v. Gardner*, 177 U. S. 332, 20 S. Ct. 656, 44 L. ed. 793.

⁶¹⁹ *Providence Bank v. Billings*, 4 Pet. 562, 7 L. ed. 939; *Charles River Bridge v. Warren Bridge*, 11 Pet. 544, 9 L. ed. 773; *Holyoke Co. v. Lyman*, 15 Wall. 512, 21 L. ed. 133; *Fertilizing Co. v. Hyde Park*, 97 U. S. 666, 24 L. ed. 1036; *Delaware R. R. Tax*, 18 Wall. 206, 21 L. ed. 888; *Pennsylvania R. R. v. Miller*, 132 U. S. 84, 10 S. Ct. 37, 33 L. ed. 267; *Fall v. Sutter County*, 21 Cal. 252; *Georgia R. R. v. Smith*, 70 Ga. 700; *Pingree v. Michigan Cent. R. R.*, 118 Mich. 329, 76 N. W. 640, 53 L. R. A. 274; *Attorney General v. Jamaica etc. Aqueduct*, 133 Mass. 366; *Providence etc. R. R., Petitioner*, 17 U. I. 344, 21 Atl. 965; *Memphis etc. R. R. v. Berry*, 41 Ark. 445; *State v. Board of Assessors*, 34 La. Ann. 575; *Dennis v. Railroad Co.*, 34 La. Ann. 956; *Wyandotte v. Corrigan*, 35 Kan. 24, 10 Pac. 101; *Springfield v. Smith*, 138 Mo. 655, 60 Am. St. Rep. 574, 40 S. W. 759, 37 L. R. A. 446; *Snell v. Chicago*, 133 Ill. 440, 24 N. E. 537, 8 L. R. A. 858; *Rockland Water Co. v. Water Co.*, 80 Me. 563, 15 Atl. 788, 1 L. R. A. 388; *Davis v. Log-Driving Co.*, 82 Me. 350, 19 Atl. 829; *Watson Seminary v. County Court*, 149 Mo. 70, 50 S. W. 883, 45 L. R. A. 675; *Gas Co. v. Parkersburg*, 30 W. Va. 439, 4 S. E. 652.

⁶²⁰ *West River Bridge Co. v. Dix*, 6 How. 548, 12 L. ed. 535; *Richmond R. R. Co. v. Louisiana R. R. Co.*, 13 How. 71, 14 L. ed. 55; *Rundle v. Delaware etc. Co.*, 14 How. 80, 14 L. ed. 335; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 69, 17 S. Ct. 721, 41 L. ed. 1165; *Enfield Bridge Co. v. Railroad Co.*, 17 Conn. 454; *Shorter v. Smith*, 9 Ga. 517; *James River Co. v. Thompson*, 3 Gratt. 270; *Mills v. St. Clair Co.*, 2 Gilm. 197; *Newcastle etc. R. R. Co. v. Peru etc. R. R. Co.*, 3 Ind. 464; *Boston Wat. Rev. Co. v. Railroad*, 40 Mass. 360; *Boston etc. R. R. Co. v. Salem etc. R. R. Co.*, 68 Mass. 1; *Central Bridge v. Lowell*, 70 Mass. 474; *Piscataqua Bridge v. N. H. Bridge Co.*, 7 N. H. 35; *Barber v. Andover*, 8 N. H. 398; *Northern R. R. v. Concord R. R.*, 27 N. H. 183; *Crosby v. Hanover*, 36 N. H. 404; *Red River Bridge Co. v. Clarksville*, 1 Sneed, 176, 60 Am. Dec. 143; *State v. Delesdernier*, 7 Tex. 99; *Armington v. Barnet*, 15 Vt. 745.

exercise of the power of eminent domain is not a revocation of the grant contained in a charter.⁶²¹ The taking of property acquired under a charter contract does not impair the obligation of the contract; it merely appropriates the property as any other property to public use.⁶²² There is nothing in the charter of a corporation which prevents the taking of its property for public use,⁶²³ provided compensation be made,⁶²⁴ even though the powers of the corporation are thereby suspended or the corporation actually dissolved.⁶²⁵

A state cannot bargain away its power of eminent domain, and a statute attempting to do so would be void.⁶²⁶ The power extends to the condemnation of corporate property for street purposes,⁶²⁷ and to the taking of corporate franchises and stock.⁶²⁸ A franchise to build and maintain a bridge may be taken for a highway under this power.⁶²⁹ A statute setting aside an inquisition for damages and substituting an inquisition de novo is unobjectionable.⁶³⁰

⁶²¹ *Illinois v. Michigan Cent. R. R. Co.*, 14 Ill. 314.

⁶²² *Green v. Biddle*, 8 Wheat. 89, 5 L. ed. 547; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 691, 17 S. Ct. 718, 41 L. ed. 1165.

⁶²³ *Alabama etc. R. R. Co. v. Kenney*, 39 Ala. 307; *In re Kerr*, 42 Barb. 119; *Bellona Comp. Case*, 3 Bland, 442; *Turnpike Co. v. Railroad Co.*, 10 Gill & J. 392; *Tuckahoe C. Co. v. Railroad Co.*, 11 Leigh, 42, 36 Am. Dec. 374; *Boston W. R. Co. v. Railroad*, 40 Mass. 360; *Backus v. Lebanon*, 11 N. H. 19, 35 Am. Dec. 466; *Crosby v. Hanover*, 36 N. H. 404; *White River T. Co. v. Railroad Co.*, 21 Vt. 590.

⁶²⁴ *Barber v. Andover*, 8 N. H. 398; *Pierce v. Somersworth*, 10 N. H. 369; *Armington v. Barnet*, 15 Vt. 745; *Central Bridge Corp. v. Lowell*, 4 Gray, 474.

⁶²⁵ *Backus v. Lebanon*, 11 N. H. 19, 35 Am. Dec. 466.

⁶²⁶ *Hyde Park v. Oak Woods Cemetery Assn.*, 119 Ill. 141, 7 N. E. 627.

⁶²⁷ *Garrison v. New York City*, 21 Wall. 196, 22 L. ed. 612; *Ex parte Girard College*, 31 Leg. Int. 164.

⁶²⁸ *Mills v. St. Clair County*, 2 Gilm. 197; *Black v. Delaware etc. R. Canal Co.*, 24 N. J. Eq. 455.

⁶²⁹ *Central Bridge Corp. v. Lowell*, 4 Gray, 474.

⁶³⁰ *Baltimore etc. R. R. Co. v. Nesbit*, 10 How. 400, 13 L. ed. 469; *Cincinnati etc. R. R. Co. v. Clifford*, 113 Ind. 466, 15 N. E. 527; *Wheeling Bridge etc. Co. v. Steel etc. Co.*, 41 W. Va. 743, 24 S. E. 653.

The police power is an inherent attribute of sovereignty, and the state cannot abandon it, or give a vested right to its exercise either to a corporation or to an individual.⁶³¹ The provisions of a charter cannot exempt a corporation or its officers from regulations made in the exercise of the police power,⁶³² and a failure to comply with police regulations may be made ground for the forfeiture of corporate charters.⁶³³

A charter granting the exclusive privilege, for a certain period, to supply gas within a city, is not a contract which will permit the corporation to prejudice the public health and public safety, and is subject to abrogation under the police power.⁶³⁴ The grant of a privilege to conduct a lottery is a mere license subject to revocation whenever the legislature may deem it necessary in the interest of the public morals.⁶³⁵ The exclusive grant of slaughtering privileges is of the same nature and may be abrogated whenever the public health may require.⁶³⁶ In the exercise of this power a city may compel a

⁶³¹ *Beer Co. v. Massachusetts*, 97 U. S. 32, 24 L. ed. 989; *Fertilizing Co. v. Hyde Park*, 97 U. S. 659, 24 L. ed. 1036; *Kresser v. Lyman*, 74 Fed. 767; *Stone v. Mississippi*, 101 U. S. 818, 25 L. ed. 1079; *Pennsylvania R. R. v. Miller*, 132 U. S. 83, 10 S. Ct. 37, 33 L. ed. 267; *New York etc. R. R. v. Bristol*, 151 U. S. 567, 14 S. Ct. 440, 38 L. ed. 269; *Hevren v. Reed*, 126 Cal. 222, 58 Pac. 537; *La Croix v. County Commissioners*, 50 Conn. 329, 47 Am. Rep. 652; *Cleveland v. City Council*, 102 Ga. 243, 29 S. E. 588, 43 L. R. A. 638; *Platte etc. Co. v. Dowell*, 17 Colo. 386, 30 Pac. 72; *Lake Roland etc. Ry. v. Baltimore*, 77 Md. 381, 26 Atl. 516, 20 L. R. A. 126.

⁶³² *Stone v. Mississippi*, 101 U. S. 820, 25 L. ed. 1079; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 669, 6 S. Ct. 252, 629 L. ed. 516; *Cummings v. Spaunhorst*, 5 Mo. App. 21.

⁶³³ *State v. Southern Pacific R. R.*, 24 Tex. 80.

⁶³⁴ *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 671, 29 L. ed. 516; *New Orleans Waterworks v. Rivers*, 115 U. S. 681, 6 S. Ct. 273, 29 L. ed. 525.

⁶³⁵ *Boyd v. Alabama*, 94 U. S. 650, 24 L. ed. 302; *Stone v. Mississippi*, 101 U. S. 819, 25 L. ed. 1079; *Douglas v. Kentucky*, 168 U. S. 498, 18 S. Ct. 199, 42 L. ed. 553.

⁶³⁶ *Butcher's Union Co. v. Crescent City Co.*, 111 U. S. 751, 4 S. Ct. 652, 28 L. ed. 585; *Portland v. Meyer*, 32 Or. 371, 67 Am. St. Rep. 539, 52 Pac. 22.

railroad corporation to change its grade,⁶³⁷ or compel a street railway to remove one of two tracks permitted under its franchise.⁶³⁸ The power extends to the enactment of all laws in the interest of public safety regulating the operation of railroads.⁶³⁹

In determining the validity of a police regulation, the fact that the business authorized by charter is injuriously affected is immaterial.⁶⁴⁰ But the legislature cannot, under the guise of laws merely purporting to be police regulations, impair or destroy charter rights.⁶⁴¹ Every legislative grant is made with an implied reservation that it shall not be exercised so as to injure others,⁶⁴² and the legislature is the exclusive judge of the propriety of interference in the use of private property within the scope of legislative power.⁶⁴³ Licenses to sell liquor are revocable at the will of the legislative body,⁶⁴⁴ and

⁶³⁷ *New York etc. R. R. v. Bristol*, 151 U. S. 567, 14 S. Ct. 440, 38 L. ed. 269; *Cleveland v. City Council*, 102 Ga. 243, 29 S. E. 583, 43 L. R. A. 638.

⁶³⁸ *Roland etc. Ry. v. Baltimore*, 77 Md. 381, 26 Atl. 516.

⁶³⁹ *Toledo etc. Ry. v. Jacksonville*, 67 Ill. 37, 16 Am. Rep. 611; *Kansas Pac. Ry. v. Mower*, 16 Kan. 573; *Galena etc. Ry. v. Loomis*, 13 Ill. 548, 56 Am. Dec. 471; *Toledo etc. Ry. Co. v. Deacon*, 63 Ill. 91; *Portland v. Boston etc. R. R.*, 65 Me. 122; *Blake v. Winona etc. R. R.*, 19 Minn. 418, 18 Am. Rep. 345; *Mobile etc. Ry. v. State*, 51 Miss. 137; *Sloan v. Pacific R. R.*, 61 Mo. 24, 21 Am. Rep. 397; *Lake Shore etc. R. R. v. Cincinnati etc. R. R.*, 30 Ohio St. 604.

⁶⁴⁰ *Platte etc. Co. v. Dowell*, 17 Colo. 376, 30 Pac. 68.

⁶⁴¹ *Philadelphia etc. R. R. v. Bowers*, 4 Houst. 506; *Town of Lake View v. Rose Hill Cemetery Co.*, 70 Ill. 191, 22 Am. Rep. 71.

⁶⁴² *Pittsburg etc. R. R. Co. v. Southwestern Pennsylvania R. R.*, 77 Pa. St. 173.

⁶⁴³ *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77; *Owen v. Sioux City*, 91 Iowa, 196, 59 N. W. 4; *State v. Manufacturing Co.*, 18 R. I. 35, 25 Atl. 253, 17 L. R. A. 856.

⁶⁴⁴ *Beer Co. v. Massachusetts*, 97 U. S. 32, 24 L. ed. 989; *Kresser v. Lyman*, 74 Fed. 767; *Powell v. State*, 69 Ala. 10; *Hevren v. Reed*, 126 Cal. 222, 58 Pac. 537; *La Croix v. Fairfield County Commissioners*, 49 Conn. 602, also 50 Conn. 329, 47 Am. Rep. 652; *Brown v. State*, 82 Ga. 225, 7 S. E. 916; *Columbus City v. Cutcomp*, 61 Iowa, 672, 17 N. W. 47; *Moore v. Indianapolis*, 120 Ind. 492, 22 N. E. 427; *Fell v. State*, 42 Md. 71, 20 Am. Rep. 83; *Young v. Blaisdell*, 138 Mass. 345; *State v. Town Council of Chester*, 39 S. C. 307, 17 S. E. 752.

a corporation holding such a license has no greater rights under it than an individual.⁶⁴⁵

A corporation claiming exemption from legislative control in any respect must show an express relinquishment of such control in its charter, or that its exercise is incompatible with or destructive of particular rights in the charter.⁶⁴⁶

— Corporate Liability.

A statute may render a corporation liable for its debts,⁶⁴⁷ or may render the stockholders personally liable for the corporation's debts,⁶⁴⁸ or may relieve stockholders, who subsequently subscribed, from personal liability.⁶⁴⁹ But a statute repealing a law imposing personal liability cannot operate to impair the remedy for the collection of debts incurred before its passage.⁶⁵⁰ While, however, a charter of a bank organized under general law permitting stockholders to exempt themselves from liability is not a contract with the state that no change withdrawing that right shall subsequently be made,⁶⁵¹ yet where the charter fixes the stockholder's liability, without reserving any power to change it, a fundamental alteration is unconstitutional.⁶⁵² Where the right to alter or repeal the charter is

⁶⁴⁵ *Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989.

⁶⁴⁶ *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77.

⁶⁴⁷ *Peters v. Railroad Co.*, 23 Mo. 107; *Grannahan v. Railroad Co.*, 30 Mo. 546.

⁶⁴⁸ *Falconer v. Campbell*, 2 McLean, 195, Fed. Cas. No. 4620; *Coffin v. Rich*, 45 Me. 507, 71 Am. Dec. 559; *Stanley v. Stanley*, 26 Me. 191; *Gray v. Coffin*, 63 Mass. 192.

⁶⁴⁹ *Ochiltree v. Railroad Co.*, 21 Wall. 249, 22 L. ed. 546; *Price v. St. Louis Ins. Co.*, 3 Mo. App. 267.

⁶⁵⁰ *Hawthorne v. Calef*, 2 Wall. 23, 17 L. ed. 776; *Pearsall v. Great Northern Ry. Co.*, 73 Fed. 939; *McDonnell v. Alabama etc. Ins. Co.*, 85 Ala. 407, 5 South. 121; *St. Louis etc. Ry. v. Harbine*, 2 Mo. App. 139; *Conant v. Van Schaick*, 24 Barb. 87. But see *Coffin v. Rich*, 45 Me. 507, 71 Am. Dec. 559; *Richardson v. Akin*, 87 Ill. 138.

⁶⁵¹ *Sherman v. Smith*, 1 Black, 587, 17 L. ed. 163.

⁶⁵² *Mowrey v. Indianapolis etc. Ry. Co.*, 4 Biss. 78, Fed. Cas. No. 9891; *Steacy v. Little Rock etc. Ry. Co.*, 5 Dill. 348, Fed. Cas. No. 13,329.

reserved there can be no objection to a law increasing the individual liability of the stockholders.⁶⁵³

The legislature may subject the property and franchises of corporations to the payment of their debts,⁶⁵⁴ or may provide means for enforcing debts against them.⁶⁵⁵ Where a statute provides that a corporation shall be responsible for its debts, rights acquired while it is in force cannot be impaired.⁶⁵⁶ As to prior debts a state cannot provide that a writ of sequestration shall not issue unless the corporation is guilty of mismanagement or willful delay in the payment of its obligations.⁶⁵⁷ The legislature may render a corporation liable to suit in any county if it does not thereby injuriously affect corporate rights.⁶⁵⁸ It may make a corporation liable absolutely in damages for certain injuries caused by it, and such action impairs no obligation contained in its charter.⁶⁵⁹

A statute enacted subsequent to incorporation may make a corporation liable to suit in the county where a tort committed by it occurs,⁶⁶⁰ and may give to a legal representative a right of action for the death or injury of his decedent caused by a corporation's act.⁶⁶¹ The right of a corporation creditor to proceed against the stockholders may be taken away and vested in a trustee without impairing any contract obligation.⁶⁶²

⁶⁵³ *South Bay Meadow Dam Co. v. Gray*, 30 Me. 547; *Bissell v. Heath*, 98 Mich. 472, 57 N. W. 535; *In re Empire City Bank*, 18 N. Y. 199.

⁶⁵⁴ *Louisville T. Co. v. Lounsbury*, 2 Met. (Ky.) 165.

⁶⁵⁵ *Foster v. Essex Bank*, 16 Mass. 245.

⁶⁵⁶ *Strubel v. Milwaukee etc. R. R.*, 12 Wis. 67.

⁶⁵⁷ *Penrose v. Erie Canal Co.*, 56 Pa. St. 46, 93 Am. Dec. 778.

⁶⁵⁸ *Howard v. Insurance Co.*, 13 B. Mon. 282; *Sanders v. Hillsborough Ins. Co.*, 44 N. H. 238.

⁶⁵⁹ *Union Pac. Ry. Co. v. De Busk*, 12 Colo. 294, 20 Pac. 752, 3 L. R. A. 350; *Indianapolis etc. Co. v. Kercheval*, 16 Ind. 84; *Radomacher v. Milwaukee etc. Ry. Co.*, 41 Iowa, 297, 20 Am. Rep. 592; *Mathews v. St. Louis etc. Ry.*, 121 Mo. 298, 24 S. W. 591, 25 L. R. A. 161; *Campbell v. Missouri Pac. Ry.*, 121 Mo. 340, 25 S. W. 936, 25 L. R. A. 175.

⁶⁶⁰ *Davis v. Central R. R. Co.*, 17 Ga. 323.

⁶⁶¹ *Southwestern R. R. Co. v. Paulk*, 24 Ga. 356; *Board v. Searce*, 2 Duvall, 576.

⁶⁶² *Story v. Furman*, 25 N. Y. 214.

The legislature may modify and control summary proceedings against stockholders,⁶⁶³ or may give to a corporation a summary remedy against its debtors or repeal an act giving such a remedy,⁶⁶⁴ or may change the mode of service of process against a corporation,^{664a} or may allow attachment of property in the hands of stockholders without previously exhausting the assets of the corporation.⁶⁶⁵ A statute authorizing a corporation to sue in its own name impairs no contract obligation,⁶⁶⁶ nor does a statute authorizing the setoff of a bank's circulating notes against judgments obtained by the bank impair the obligation of its charter.⁶⁶⁷

— Exemption from Taxation.*

In the absence of any constitutional restriction, a state legislature has power to bind the state in relinquishing its power to tax a corporation, and such a provision in a charter constitutes a contract which the state may not subsequently impair.⁶⁶⁸ The same protection is afforded by the obligation clause to a statute granting the exemption to a corporation without reserve.⁶⁶⁹ The taxing power is of such paramount

⁶⁶³ *Ex parte Northeast R. R. Co.*, 37 Ala. 679; *Citizens' Bank v. Deynoodt*, 25 La. Ann. 628; *Merchants' Ins. Co. v. Hill*, 86 Mo. 466; *Hirschfeld v. Bopp*, 145 N. Y. 84, 39 N. E. 817.

⁶⁶⁴ *Bank of Columbia v. Okely*, 4 Wheat. 235, 4 L. ed. 559.

^{664a} *Cario etc. R. R. Co. v. Hecht*, 95 U. S. 168, 24 L. ed. 423, affirming 29 Ark. 661; *New Albany etc. R. R. Co. v. McNamara*, 11 Ind. 643.

⁶⁶⁵ *Smith v. Bryan*, 34 Ill. 264.

⁶⁶⁶ *Crawford v. Bank of Mobile*, 7 How. 282, 12 L. ed. 700; *Old Dominion v. McVeigh*, 20 Gratt. 482.

⁶⁶⁷ *Blount v. Windley*, 95 U. S. 177, 24 L. ed. 424.

⁶⁶⁸ *Home of the Friendless v. Rouse*, 8 Wall. 496, 19 L. ed. 495; *Washington University v. Rouse*, 8 Wall. 439, 19 L. ed. 498; *Raleigh etc. R. Co. v. Reid*, 13 Wall. 269, 20 L. ed. 570; *Humphrey v. Pegues*, 16 Wall. 249, 21 L. ed. 326; *The Delaware R. R. Tax*, 18 Wall. 225, 21 L. ed. 888; *Trask v. Maguire*, 18 Wall. 401, 21 L. ed. 938; *Northwestern University v. Illinois*, 99 U. S. 309, 25 L. ed. 387; *Asylum v. New Orleans*, 105 U. S. 369, 26 L. ed. 1128.

⁶⁶⁹ *New Jersey v. Yard*, 95 U. S. 115, 24 L. ed. 352; *Wilmington etc. R. R. v. Alebrook*, 146 U. S. 293, 13 S. Ct. 72, 36 L. ed. 972; *New Jersey v. Wilson*, 7 Cr. 167, 3 L. ed. 303.

*Power to exempt generally, see ante, pp. 300-302.

importance, however, that its abandonment ought never to be presumed unless the intention of the legislature is clear,⁶⁷⁰ and that intention must be indicated by unmistakable words.⁶⁷¹ The power is necessary to the existence of the state, and acts limiting it must be strictly construed in favor of the state.⁶⁷² Accordingly where there is no provision in a charter for exemption from taxation, there can be no objection to any subsequent tax imposed by the legislature.⁶⁷³ So, also, a charter requiring a railway to pay "such license as is now paid by other companies" is not such a contract as precludes the levy of a higher or different tax,⁶⁷⁴ nor is a bank charter providing that no higher tax shall be levied upon it than on other banking institutions in the state,⁶⁷⁵ and a provision that a certain rate of taxes shall be paid in lieu of all taxes to the state does not exempt from liability for municipal taxes,⁶⁷⁶ nor from a school tax.⁶⁷⁷

⁶⁷⁰ *Providence Bank v. Billings*, 4 Pet. 561, 7 L. ed. 939; *Philadelphia & Wilmington R. R. v. Maryland*, 10 How. 393, 13 L. ed. 461; *Railroad Co. v. Gaines*, 97 U. S. 708, 24 L. ed. 1091; *Railway Co. v. Loftin*, 98 U. S. 564, 25 L. ed. 222; *Yazoo etc. Ry. v. Adams*, 180 U. S. 22, 21 S. Ct. 240, 45 L. ed. 395.

⁶⁷¹ *Jefferson Branch Bank v. Skelly*, 1 Black, 447, 17 L. ed. 123; *Morgan v. Louisiana*, 98 U. S. 222, 23 L. ed. 860; *West Wisconsin R. R. v. Supervisors*, 93 U. S. 598, 23 L. ed. 814; *Southwestern R. R. v. Wright*, 116 U. S. 236, 6 S. Ct. 375, 29 L. ed. 626; *Vicksburg etc. R. R. v. Dennis*, 116 U. S. 668, 6 S. Ct. 625, 29 L. ed. 770; *New Orleans etc. R. R. v. New Orleans*, 143 U. S. 195, 12 S. Ct. 406, 36 L. ed. 121; *Keokuk etc. R. R. v. Missouri*, 152 U. S. 306, 14 S. Ct. 592, 38 L. ed. 450; *Phoenix Fire Ins. Co. v. Tennessee*, 161 U. S. 178, 16 S. Ct. 471, 40 L. ed. 660.

⁶⁷² *Rector of Christ Church v. County of Philadelphia*, 24 How. 302, 16 L. ed. 602; *Erie R. R. Co. v. Pennsylvania*, 21 Wall. 492, 22 L. ed. 595; *Bank v. Tennessee*, 104 U. S. 495, 26 L. ed. 810; *Railway Co. v. Loftin*, 105 U. S. 261, 26 L. ed. 1042; *Winona etc. Land Co. v. Minnesota*, 159 U. S. 529, 16 S. Ct. 83, 40 L. ed. 247.

⁶⁷³ *Memphis Gas Co. v. Shelby County*, 109 U. S. 400, 3 S. Ct. 205, 27 L. ed. 976; *Citizens' Savings Bank v. Owensboro*, 173 U. S. 654, 19 S. Ct. 530, 43 L. ed. 840.

⁶⁷⁴ *Railway Co. v. Philadelphia*, 101 U. S. 536, 25 L. ed. 912.

⁶⁷⁵ *Ohio Life Ins. Co. v. Debolt*, 16 How. 438, 14 L. ed. 997.

⁶⁷⁶ *Lexington v. Aull*, 30 Mo. 480; *Paris v. Farmers' Bank*, 30 Mo. 575; *City v. Hannibal etc. R. R.*, 39 Mo. 476; *Pacific R. R. Co. v. Cass*, 53 Mo. 17.

⁶⁷⁷ *Livingston v. Hannibal etc. R. R.*, 60 Mo. 516.

While it is not necessary that a bonus should be received to make a tax exemption binding upon the state,⁶⁷⁸ yet exemptions from taxation created by the legislature as mere gratuities are like any other agreements without consideration, nude pacts, and are subject to modification or repeal.⁶⁷⁹ The mere agreement on the part of the corporation to do something which it is already bound to do is not sufficient consideration,⁶⁸⁰ and a statute exempting certain manufacturing corporations from taxation is a mere bounty law subject to repeal at any time.⁶⁸¹ Where, however, there is a good consideration for the exemption granted, the contract becomes irrevocable by the legislature.⁶⁸²

A provision exempting from taxation applies not merely to the state, but to every public corporation created by it,⁶⁸³ and so long as a corporation uses its property for the original purpose the exemption continues.⁶⁸⁴ The exemption extends to all that is obviously appropriate and convenient to carry into effect the franchise granted, and to its objects and its use,⁶⁸⁵

⁶⁷⁸ *Piqua Branch Bank v. Knoop*, 16 How. 369, 14 L. ed. 977.

⁶⁷⁹ *Tucker v. Ferguson*, 22 Wall. 527, 22 L. ed. 805; *West Wisconsin R. R. Co. v. Supervisors*, 93 U. S. 597, 23 L. ed. 314; *St. Louis etc. R. R. Co. v. Loftin*, 10 Ark. 693; *Holly Springs etc. Co. v. Marshall*, 52 Miss. 281; *Sandusky Bank v. Wilbor*, 7 Ohio St. 481; *People v. Commissioners*, 47 N. Y. 501; *Hospital v. Philadelphia*, 24 Pa. St. 229; *State v. County Treasurer*, 4 Rich., N. S., 520.

⁶⁸⁰ *Grand Lodge v. New Orleans*, 166 U. S. 149, 17 S. Ct. 523, 41 L. ed. 951.

⁶⁸¹ *Salt Co. v. East Saginaw*, 13 Wall. 377, 20 L. ed. 611; *Fertilizing Co. v. Hyde Park*, 97 U. S. 666, 24 L. ed. 1036; *Welch v. Cook*, 97 U. S. 543, 24 L. ed. 1112.

⁶⁸² *Wilmington R. R. v. Reid*, 13 Wall. 264, 20 L. ed. 568; *Pacific R. R. Co. v. Maguire*, 20 Wall. 36, 22 L. ed. 282, affirming 49 Mo. 490, 8 Am. Rep. 141; *Northwestern University v. Illinois*, 99 U. S. 309, 25 L. ed. 387; *Oliver v. Memphis etc. R. R.*, 30 Ark. 128; *St. Vincent's College v. Shaefer*, 104 Mo. 261, 16 S. W. 395; *Worth v. Wilmington etc. R. R.*, 89 N. C. 291, 45 Am. Rep. 679.

⁶⁸³ *McGee v. Mathis*, 4 Wall. 157, 18 L. ed. 314; *Mayor v. Baltimore etc. R. R. Co.*, 6 Gill, 288, 48 Am. Dec. 531; *Bank of Cape Fear v. Edwards*, 5 Ired. 516; *State Bank v. Charleston*, 3 Rich. 342.

⁶⁸⁴ *Washington University v. Rouse*, 8 Wall. 439, 19 L. ed. 498.

⁶⁸⁵ *State v. Georgia R. R. etc. Co.*, 54 Ga. 423; *State v. Mansfield*, 23 N. J. 510; *State v. Flavell*, 24 N. J. 370; *State v. Powers*, 24 N.

including real and personal property requisite for the successful prosecution of its business;⁶⁸⁶ but a general exemption will be strictly construed in this respect and will be held to extend only to property held for the transaction of the corporation's business,⁶⁸⁷ and it cannot include property acquired in contemplation of future needs.⁶⁸⁸ Exemption from "all taxation" includes exemption from a privilege tax,⁶⁸⁹ but not exemption from an assessment for benefits arising from the opening or improvement of a street.⁶⁹⁰

A provision exempting a corporation from taxation exempts its property as well as its franchise,⁶⁹¹ but not its bonds.⁶⁹² A transfer or succession tax is not a tax upon property but a charge for a privilege enjoyed under state law, and the fact that the property consists of bonds exempt from taxation does not render the tax void as impairing the obligation of contracts.⁶⁹³

J. 400; *State v. Blundell*, 24 N. J. 402; *State v. Haight*, 25 N. J. 40; *State v. Collector*, 26 N. J. 519; *Cook v. State*, 33 N. J. 474; *State v. Hancock*, 35 N. J. 537; *State v. Woodruff*, 36 N. J. 94; *State v. Collector*, 38 N. J. 270.

⁶⁸⁶ *Wilmington etc. R. R. Co. v. Reid*, 13 Wall. 268, 20 L. ed. 568; *Pacific R. R. Co. v. Maguire*, 20 Wall. 44, 22 L. ed. 282; *Farlington v. Tennessee*, 95 U. S. 687, 24 L. ed. 558; *New Mexico v. United States Trust Co.*, 172 U. S. 181, 19 S. Ct. 881, 43 L. ed. 407; *Nichols v. New Haven etc. Co.*, 42 Conn. 125; *State v. Philadelphia etc. R. R.*, 45 Md. 383; *Hancock v. Singer Mfg. Co.*, 62 N. J. L. 336, 41 Atl. 850, 42 L. R. A. 852.

⁶⁸⁷ *Ford v. Delta etc. Land Co.*, 164 U. S. 668, 17 S. Ct. 230, 41 L. ed. 590.

⁶⁸⁸ *Duluth etc. Ry. Co. v. Douglas County*, 103 Wis. 81, 79 N. E. 36.

⁶⁸⁹ *Grand Gulf etc. R. R. Co. v. Buck*, 53 Miss. 246.

⁶⁹⁰ *State Home Society v. Mayor*, 35 N. J. 157; *City v. Society*, 24 N. J. 385; *Mayor v. Proprietors*, 7 Md. 517; *Sheehan v. Good Samaritan Hospital*, 50 Mo. 155, 11 Am. Rep. 412. But see *St. Paul etc. R. R. Co. v. St. Paul*, 21 Minn. 526; *State v. Newark*, 27 N. J. L. 185.

⁶⁹¹ *Camden etc. R. R. v. Commissioners*, 18 N. J. 71. But see *Municipality v. Commercial Bank*, 5 Rob. (La.) 151.

⁶⁹² *State v. Branin*, 23 N. J. 484.

⁶⁹³ *Orr v. Gilman*, 183 U. S. 278, 22 S. Ct. 213, 46 L. ed. 196.

If a charter merely exempts the corporation and its property the exemption does not pass to a purchaser of the property at foreclosure or execution sale.⁶⁹⁴ Express statutory direction is necessary to pass the exemption to a purchaser,⁶⁹⁵ and even the grant of all the powers, rights and privileges does not carry the exemption.⁶⁹⁶ Construing an exemption from taxation as a personal privilege there can be no constitutional objection to a prohibition against exemptions which operates to prevent an exemption from passing upon the consolidation of corporations;⁶⁹⁷ but if the state expressly makes the immunity transferable it cannot tax property in the hands of purchasers.⁶⁹⁸

If a charter stipulates for the exemption of property from taxation no tax can be assessed thereon,⁶⁹⁹ if all the property is used for necessary purposes; and all the property not so used may be taxed.⁷⁰⁰ It is immaterial, however, by whom the property is used; if it is used for the purposes of the corporation it is exempt.⁷⁰¹ So if a charter exempting property authorizes a corporation to erect and rent a building, it ex-

⁶⁹⁴ *Morgan v. Louisiana*, 93 U. S. 217, 23 L. ed. 860; *Trask v. Maguire*, 18 Wall. 391, 21 L. ed. 938; *Railroad Co. v. Hamblen County*, 102 U. S. 275, 26 L. ed. 152; *Wilson v. Gaines*, 103 U. S. 421, 26 L. ed. 401; *Memphis R. R. v. Commissioners*, 112 U. S. 617, 5 S. Ct. 302, 28 L. ed. 837.

⁶⁹⁵ *Morgan v. Louisiana*, 93 U. S. 221, 23 L. ed. 860; *Railroad Co. v. Gaines*, 97 U. S. 711, 24 L. ed. 1091.

⁶⁹⁶ *Pickard v. Tennessee etc. R. R.*, 130 U. S. 642, 9 S. Ct. 640, 32 L. ed. 1051; *Phoenix Fire Ins. Co. v. Tennessee*, 161 U. S. 177, 16 S. Ct. 471, 40 L. ed. 660.

⁶⁹⁷ *Keokuk etc. Co. v. Missouri*, 152 U. S. 311, 14 S. Ct. 596, 33 L. ed. 450, affirming 41 Fed. 307; *Chicago etc. R. R. v. Guffey*, 122 U. S. 575, 7 S. Ct. 693, 1300, 30 L. ed. 1135; *Covington etc. Road Co. v. Sandford*, 164 U. S. 587, 17 S. Ct. 201, 41 L. ed. 560.

⁶⁹⁸ *St. Paul etc. R. R. Co. v. Parcher*, 14 Minn. 297; *State v. Winona etc. R. R. Co.*, 21 Minn. 315; *A. & C. R. R. Co. v. Allen*, 15 Fla. 15.

⁶⁹⁹ *Hardy v. Waltham*, 24 Mass. 108.

⁷⁰⁰ *Ford v. Delta etc. Land Co.*, 164 U. S. 668, 17 S. Ct. 230, 41 L. ed. 590; *State v. Love*, 37 N. J. 60.

⁷⁰¹ *State v. Betts*, 24 N. J. 555.

empts the property leased as stores.⁷⁰² Exempting the property of a corporation exempts its franchise.⁷⁰³

A charter describing the mode in which a tax shall be levied upon the corporation is not such a contract as precludes a change in that mode, provided the change does not make taxation more onerous;⁷⁰⁴ but a limitation to a particular mode includes a negative of any other mode.⁷⁰⁵ A provision in a charter merely providing that the corporation shall pay annually into the treasury a certain tax does not amount to a contract that the state will never impose a different or greater tax.⁷⁰⁶ The legislature may prescribe a bonus to be paid in commutation of all taxes on corporate stock and property,⁷⁰⁷ and where the charter provides that a certain sum or a certain percentage of the receipts paid annually shall be in lieu of all other taxes, a contract is created which the legislature cannot subsequently impair.⁷⁰⁸

⁷⁰² *State v. Leester*, 29 N. J. 541.

⁷⁰³ *Wilmington R. R. Co. v. Reid*, 13 Wall. 264, 20 L. ed. 568; *Pacific R. R. Co. v. Maguire*, 20 Wall. 44, 22 L. ed. 282; *Porter v. Rockford etc. R. R. Co.*, 76 Ill. 574; *Hancock v. Singer Mfg. Co.*, 62 N. J. L. 336, 41 Atl. 850, 42 L. R. A. 852.

⁷⁰⁴ *Ohio Life Ins. etc. Co. v. Debolt*, 16 How. 438, 14 L. ed. 997; *Bailey v. Maguire*, 22 Wall. 215, 22 L. ed. 850; *Moore v. Holliday*, 4 Dill. 53, Fed. Cas. No. 9765; *State v. Morris*, 49 N. J. L. 222, 7 Atl. 840; *Louisville etc. R. Co. v. Commonwealth*, 73 Ky. 43; *State v. Hannibal & St. Joseph R. R. Co.*, 60 Mo. 143; *Morris etc. R. R. Co. v. Commissioners*, 38 N. J. L. 472; *State v. Petway*, 55 N. C. 396.

⁷⁰⁵ *Raleigh etc. R. R. v. Reid*, 13 Wall. 269, 20 L. ed. 570.

⁷⁰⁶ *Minot v. Philadelphia etc. R. R. Co.*, 18 Wall. 231, 21 L. ed. 888; affirming 2 Abb. U. S. 323, Fed. Cas. No. 9645; *Union Bank v. State*, 9 Yerg. 490.

⁷⁰⁷ *Daughdrill v. Alabama etc. Co.*, 31 Ala. 91.

⁷⁰⁸ *Gordon v. Appeal Tax Court*, 3 How. 147, 11 L. ed. 529; *Piqua Branch of State Bank of Ohio v. Knoop*, 16 How. 386, 14 L. ed. 977; *Dodge v. Woolsey*, 18 How. 331, 15 L. ed. 401; *Mechanics' Bank v. Debolt*, 18 How. 380, 15 L. ed. 458; *Mechanics' Bank v. Thomas*, 13 How. 384, 15 L. ed. 460; *Jefferson Branch Bank v. Skelly*, 1 Black, 446, 17 L. ed. 173; *Franklin Bank v. State*, 1 Black, 474, 17 L. ed. 180; *Farrington v. Tennessee*, 95 U. S. 687, 24 L. ed. 558; *Wright v. Sill*, 2 Black, 544, 17 L. ed. 333; *Atlantic etc. Ry. Co. v. Allen*, 15 Fla. 637; *Franklin County Court v. Deposit Bank*, 87 Ky. 370. 9

Where the right to alter the charter is reserved, the exemption may be withdrawn or qualified;⁷⁰⁹ but the legislative power retained in a charter to dissolve the corporation does not authorize the imposition of a tax upon exempt property without granting indemnity.⁷¹⁰ A corporation may yield a part of the exemption and accept other terms in lieu thereof,⁷¹¹ but if a charter is renewed without a renewal of the exemption the power to tax is revived.⁷¹² Where it is expressly provided in the charter that the tax is to be levied upon the happening of some future contingency, no tax can be levied prior to that time.⁷¹³

— Effect and Operation of Exemption.

If the charter of a corporation exempts the capital stock from taxation, the exemption extends to additional capital permitted under subsequent acts.⁷¹⁴ If the stock is exempted the state cannot levy a tax upon the property held by the corporation,⁷¹⁵ but if the charter makes a distinction between the capital stock and other property, a tax may be laid upon the

S. W. 212; *Leroy v. East S. C. R. R.*, 18 Mich. 233, 100 Am. Dec. 162; *O'Donnelly v. Bailey*, 24 Miss. 386; *Matheny v. Golden*, 5 Ohio St. 361; *Mayor v. Baltimore etc. R. R.*, 6 Gill, 288, 48 Am. Dec. 531; *North Missouri R. R. v. Maguire*, 49 Mo. 499, 8 Am. Rep. 145. But see *State v. Bank of Smyrna*, 2 Houst. 99, 73 Am. Dec. 699.

⁷⁰⁹ *Tomlinson v. Jessup*, 15 Wall. 459, 21 L. ed. 204; *Louisville Water Co. v. Clark*, 143 U. S. 1, 12 S. Ct. 346, 36 L. ed. 55, affirming 90 Ky. 515, 14 S. W. 502; *Spring Valley Co. v. Bartlett*, 8 Saw. 589, 16 Fed. 642; *Hewitt v. New York etc. R. R.*, 12 Blatchf. 467, Fed. Cas. No. 6443; *Union Imp. Co. v. Commonwealth*, 69 Pa. St. 140; *Commonwealth v. Fayette County R. R.*, 55 Pa. St. 542; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340; *Mayor v. Railroad Co.*, 113 N. Y. 318, 21 N. E. 62.

⁷¹⁰ *Santa Anna's Asylum v. City of New Orleans*, 705 U. S. 362, 26 L. ed. 1128.

⁷¹¹ *State v. Commissioners*, 37 N. J. 240.

⁷¹² *State v. Bank of Smyrna*, 2 Houst. 99, 73 Am. Dec. 699.

⁷¹³ *Raleigh etc. R. R. Co. v. Reid*, 13 Wall. 269, 20 L. ed. 570; *Barnes v. Hornegay*, 62 Fed. 671; *McGavisk v. State*, 34 N. J. 609.

⁷¹⁴ *State v. New Haven etc. R. R.*, 30 Conn. 290.

⁷¹⁵ *New Haven v. City Bank*, 31 Conn. 106; *Ordinary v. Central R. R. Co.*, 40 Ga. 646; *Tax Cases*, 12 Gill & J. 117.

property although the stock is exempt.⁷¹⁶ The immunity of a corporation from taxation does not exonerate dividends paid to stockholders.⁷¹⁷ Accordingly a provision merely exempting the corporate franchise will not exempt the stockholders,⁷¹⁸ but a stipulation not to impose any further tax upon a corporation whatever precludes any taxation of the stockholders on account of their stock,⁷¹⁹ and charter exemption of stock exempts a corporation's income.⁷²⁰ So also if shares are exempted an act imposing a tax upon franchise or property is invalid,⁷²¹ and a contract not to tax a railroad or its property is impaired by the levy of a tax upon its gross receipts for the transportation of freight and passengers.⁷²² The exemption of a railroad from taxation does not exempt the lessee of the road from taxation on profits and earnings.⁷²³

The effect of the consolidation of corporations is to terminate the existence of those corporations, and to form a new corporation,⁷²⁴ governed by a law existing at the time of consolidation which prohibits exemptions.⁷²⁵ An exemption from taxation is merely a personal privilege, and even where one corporation is authorized to retain the exemption upon consolidation, it will not be construed to apply to property belonging to the

⁷¹⁶ *St. Louis etc. R. R. v. Loftin*, 30 Ark. 693.

⁷¹⁷ *State v. Petway*, 2 Jones Eq. 396.

⁷¹⁸ *Gordon v. Appeal Tax Court*, 3 How. 133, 11 L. ed. 529.

⁷¹⁹ *Gordon v. Appeal Tax Court*, 3 How. 150, 11 L. ed. 529; *Stats v. Branin*, 23 N. J. L. 493; *State v. Bentley*, 23 N. J. L. 540; *State v. Powers*, 24 N. J. 400.

⁷²⁰ *State v. Hood*, 15 Rich. 187.

⁷²¹ *Mayor v. Baltimore etc. R. R. Co.*, 6 Gill, 288, 48 Am. Dec. 531; *Nichols v. New Haven etc. R. R. Co.*, 42 Conn. 103; *Hannibal etc. R. R. Co. v. Chacklett*, 30 Mo. 550; *State v. Hannibal etc. R. R. Co.*, 37 Mo. 265.

⁷²² *Pacific R. R. Co. v. Maguire*, 20 Wall. 36, 22 L. ed. 282.

⁷²³ *State v. Delaware etc. R. R. Co.*, 30 N. J. 473, 31 N. J. 531.

⁷²⁴ *Keokuk etc. R. R. Co. v. Missouri*, 152 U. S. 305, 14 S. Ct. 593, 38 L. ed. 450; affirming 99 Mo. 36, 12 S. W. 291; *Cheraw etc. Ry. Co. v. Commissioners*, 88 N. C. 525.

⁷²⁵ *Chicago etc. R. R. v. Guffey*, 122 U. S. 575, 30 L. ed. 1135; *Covington etc. Road Co. v. Sandford*, 164 U. S. 587, 17 S. Ct. 201, 41 L. ed. 560.

other,⁷²⁶ and upon the same principle, where a railroad's property is exempt for a limited time only the limitation follows the property into the consolidation with another company whose property is perpetually exempt.⁷²⁷ Express statutory direction is necessary to pass property to a purchaser free from taxation,⁷²⁸ and in the absence of such direction taxation of property in the hands of the purchaser impairs no contract obligation.⁷²⁹ Authority to sell with all the "powers, rights and privileges" attaching to the property does not carry an exemption from taxation.⁷³⁰ If the stock of a corporation is exempt, no tax can be levied on a branch road constructed under authority of an amended charter.⁷³¹

Banking Corporations.

A charter granted to a bank constitutes a contract which the state cannot impair,⁷³² and a provision in a charter cannot be abrogated by subsequent legislation.⁷³³ Accordingly a provision that a bank's bills shall be receivable for taxes or other debts due the state is an obligation protected by this clause,⁷³⁴

⁷²⁶ Philadelphia etc. R. R. v. State of Maryland, 10 How. 376, 13 L. ed. 461; Tomlinson v. Branch, 15 Wall. 460, 21 L. ed. 189; Delaware R. R. Tax, 18 Wall. 206, 21 L. ed. 888; Evansville etc. R. R. Co. v. Commonwealth, 9 Bush, 438.

⁷²⁷ Tomlinson v. Branch, 15 Wall. 466, 21 L. ed. 189; Central Ry. Co. v. Georgia, 92 U. S. 676, 23 L. ed. 757; Railroad Co. v. Alsbrook, 110 N. C. 165, 14 S. E. 659.

⁷²⁸ Morgan v. Louisiana, 93 U. S. 221, 26 L. ed. 860; Railroad Co. v. Gaines, 97 U. S. 711, 24 L. ed. 1091.

⁷²⁹ Armstrong v. Treasurer of Athens County, 16 Pet. 290, 10 L. ed. 915; Lord v. Litchfield, 36 Conn. 129, 4 Am. Rep. 47; Miami County v. Brackenridge, 12 Kan. 122.

⁷³⁰ Pickard v. Tennessee etc. R. R., 130 U. S. 642, 9 S. Ct. 640, 32 L. ed. 1051; Phoenix Fire Ins. Co. v. Tennessee, 161 U. S. 177, 16 S. Ct. 471, 40 L. ed. 660. But see Humphreys v. Pegues, 16 Wall. 244, 21 L. ed. 326.

⁷³¹ Atlantic etc. R. R. v. Allen, 15 Fla. 637.

⁷³² Woodruff v. Trapnall, 10 How. 206, 13 L. ed. 383; Paup v. Drew, 10 How. 222, 13 L. ed. 394; Furman v. Nichol, 8 Wall. 63, 19 L. ed. 370; Planters' Bank v. Sharp, 6 How. 319, 12 L. ed. 447.

⁷³³ Furman v. Nichol, 8 Wall. 63 19 L. ed. 370; Barings v. Dabney, 19 Wall. 11, 22 L. ed. 90.

⁷³⁴ Woodruff v. Trapnall, 10 How. 206, 13 L. ed. 383; Furman

and the repeal of such a provision, otherwise valid, cannot affect notes in circulation at the time of the repeal.⁷³⁵ Even where the state has reserved the power to alter or repeal the charter, such a provision as the one referred to can be repealed only by clear and unobscure language; no such intent can be gathered from an obscure provision.⁷³⁶ Special charter authority derived from the legislature is not affected by general legislation upon the same subject.⁷³⁷ Where a statute provides that such bills are payable in gold and silver coin, a law providing that depreciated notes shall not be received is unobjectionable.⁷³⁸ A charter provision or a statute requiring a bank to receive its own notes in payment of debts due it constitutes a contract, as to the bank's debtors, which cannot be impaired.⁷³⁹

The general right to regulate the issue of bank notes will not be held to have been relinquished unless the intention is clearly expressed,⁷⁴⁰ and a statute prohibiting a bank from transferring notes by indorsement is valid unless the power to do so is expressly conferred in the charter.⁷⁴¹ So also the legislature may make interest coupons from bonds issued for the benefit of a bank receivable in payment of debts due the bank in the absence of any charter obligation to pay in

v. Nichol, 8 Wall. 63, 19 L. ed. 370; *Keith v. Clark*, 97 U. S. 451, 24 L. ed. 1071.

⁷³⁵ *Woodruff v. Trapnall*, 10 How. 236, 13 L. ed. 383; *Paup v. Drew*, 10 How. 222, 13 L. ed. 394; *Trigg v. Drew*, 10 How. 224, 13 L. ed. 397.

⁷³⁶ *State v. Stoll*, 17 Wall. 436, 21 L. ed. 650.

⁷³⁷ *Gilchrist v. Helena etc. R. R.*, 47 Fed. 595; *Gowen v. Harley*, 56 Fed. 979; *Huron v. Second etc. Bank*, 86 Fed. 281, 49 L. R. A. 534; *New York etc. R. R. v. Bridgeport Traction Co.*, 65 Conn. 429, 32 Atl. 956, 29 L. R. A. 367; *Dewey v. Central Car etc. Co.*, 42 Mich. 402, 4 N. W. 181.

⁷³⁸ *Gainesville etc. Mfg. Co. v. Roper*, 15 Rich. 138.

⁷³⁹ *Knox v. Exchange Bank*, 12 Wall. 382, 20 L. ed. 414; *Dundas v. Bowler*, 3 McLean, 397, Fed. Cas. No. 4141.

⁷⁴⁰ *Ohio Trust Co. v. Debolt*, 16 How. 435, 14 L. ed. 997; 1 Ohio St. 563; *State v. Matthews*, 3 Jones (N. C.), 451.

⁷⁴¹ *Payne v. Baldwin*, 11 Miss. 661; *McIntyre v. Ingraham*, 35 Miss. 25.

specie,⁷⁴² or may require the bank to receive its own notes at their par value in payment of such debts.⁷⁴³ A statute requiring sheriffs levying execution in favor of banks to accept the bank's notes in satisfaction is likewise unobjectionable.⁷⁴⁴ But a statute which permits bank notes to be tendered for a debt due a bank, but assigned before the passage of the statute, is unconstitutional,⁷⁴⁵ and where bank notes are made payable at a certain place, a statute requiring the bank to receive them in payment of notes of other banks impairs the obligation of a contract and is void.⁷⁴⁶ A statute may provide that a bank shall redeem several bills presented together as one obligation,⁷⁴⁷ or may impose a penalty for refusal to pay bank bills unless a clause in the charter precludes the passage of such a law.⁷⁴⁸ But a law declaring the notes of a state bank void is unconstitutional.⁷⁴⁹

A banking corporation the stock of which is owned by private individuals is a private corporation,⁷⁵⁰ but a state cannot incorporate associations of individuals and authorize them to coin money.⁷⁵¹ If a state creates a bank of which it is the sole stockholder, it cannot withdraw the fund or any part without impairing the contracts of the bank's creditors,⁷⁵² and a statute which withdraws the assets of a bank from the operation of all legal process is upon the same footing and is

⁷⁴² *Thurston v. Peay*, 21 Ark. 85.

⁷⁴³ *Bank of Maryland v. Ruff*, 7 Gill & J. 448; *Williams v. Planters' Bank*, 12 Rob. 125; *Exchange Bank v. Teddy*, 67 N. C. 169; *Bank v. Hart*, 67 N. C. 264.

⁷⁴⁴ *Bank of Gallipolis v. Donnigan*, 12 Ohio, 224, 40 Am. Dec. 475.

⁷⁴⁵ *Dundas v. Bowler*, 3 McLean, 397, Fed. Cas. No. 4141.

⁷⁴⁶ *Bank v. Bank of Cape Fear*, 13 Ired. 75.

⁷⁴⁷ *Reapers' Bank v. Willard*, 24 Ill. 433, 76 Am. Dec. 765.

⁷⁴⁸ *Brown v. Penobscot Bank*, 8 Mass. 445.

⁷⁴⁹ *Keith v. Clark*, 97 U. S. 451, 24 L. ed. 1071; *Virginia Coupon Cases*, 114 U. S. 291, 5 S. Ct. 219, 29 L. ed. 185.

⁷⁵⁰ *Piqua Branch Bank v. Knoop*, 16 How. 369, 14 L. ed. 977; *Miners' Bank v. United States*, 1 Iowa, 553; *Hazen v. Union Bank*, 1 Sneed, 115.

⁷⁵¹ *Briscoe v. Bank of Kentucky*, 11 Pet. 257, 9 L. ed. 709, 7 J. Marsh. 349.

⁷⁵² *Curran v. Arkansas*, 15 How. 320, 14 L. ed. 705; *Dabney v. Bank*, 3 S. C. 158; *State and Watson v. Bank*, 5 Baxt. 65.

void.⁷⁵³ A statute appropriating the assets of a bank operates as an assignment, and cannot be repealed by a subsequent act.⁷⁵⁴ A general statute making the suspension of specie payment by a bank ground for forfeiture of its charter is void, where no such power is reserved in the charter.⁷⁵⁵

A statute providing that in the event of a bank's insolvency the directors shall be primarily liable to the full amount of the indebtedness, thus repealing a law which rendered them only secondarily liable, is not subject to the objection that it impairs contract obligations.⁷⁵⁶ A charter provision which is merely remedial—e. g., allowing the bank a summary process by execution in the nature of attachment against certain creditors—is not a part of the contract contained in the charter.⁷⁵⁷ So also an act providing for the appointment of a receiver to take charge of the affairs of a bank and conduct its suits is valid,⁷⁵⁸ as is an act requiring mortgages held by a bank to be stamped,⁷⁵⁹ or an act providing for the filing of an information against a bank for the violation of its charter.⁷⁶⁰ A statute allowing a judge and commissioner to reduce the account in a savings bank affects only the remedy, and is valid.⁷⁶¹ The legislature may assess the stockholders of a bank which has gone into liquidation, without impairing any contract obligation.⁷⁶²

Bridges and Ferries.

A charter granted to a bridge or ferry corporation is a contract;⁷⁶³ but if no consideration has been paid the grantee

⁷⁵³ *State v. Bank*, 1 Rich., N. S., 63.

⁷⁵⁴ *Barings v. Dabney*, 19 Wall. 11, 22 L. ed. 90.

⁷⁵⁵ *State v. Tombechee Bank*, 2 Stew. 30.

⁷⁵⁶ *Falconer v. Campbell*, 2 McLean, 195, Fed. Cas. No. 4620.

⁷⁵⁷ *Bank of Columbia v. Okely*, 4 Wheat. 245, 4 L. ed. 559.

⁷⁵⁸ *Carey v. Giles*, 9 Ga. 258.

⁷⁵⁹ *Ex parte Burton*, 3 Gill, 9.

⁷⁶⁰ *Commercial Bank v. Rodney*, 4 Smedes & M. 495.

⁷⁶¹ *Simpson v. Savings Bank*, 56 N. H. 466.

⁷⁶² *Simpson v. Savings Bank*, 56 N. H. 466.

⁷⁶³ *Proprietors v. Hoboken Co.*, 1 Wall. 116, 17 L. ed. 571; *In re Binghamton Bridge*, 3 Wall. 51, 18 L. ed. 137; *Mills v. St. Clair*

takes a franchise subject to the legislative power to regulate rates of ferriage.⁷⁶⁴ A statute cannot require a canal corporation to keep in repair the bridges connecting the highways intersected by its canal.⁷⁶⁵ A statute giving a right of action to those who have been injured by the erection of a close bridge over a navigable creek, when such bridge was authorized by charter, impairs the obligation of the charter and is void.⁷⁶⁶ If the charter of a bridge company or a turnpike company prescribes the form of signs and boards with rates of toll, it will prevail over a general statute subsequently passed.⁷⁶⁷ Whether a state can deprive itself of the right to regulate tolls has been questioned;⁷⁶⁸ but where a charter fixes the maximum rate to be charged there is no contract which precludes a reduction by the state.⁷⁶⁹ The immunity from legislative control must be granted in clear and unmistakable terms, and can never be presumed.⁷⁷⁰ Where the right to alter or repeal the charter is reserved to the legislature, there can be no objection to state regulation of rates.⁷⁷¹

A new ferry or bridge materially diverting travel or business from an old one established under a prior charter is not unconstitutional unless the franchise under such charter is expressly made exclusive.⁷⁷² Accordingly the licensing of a toll

Co., 8 How. 581, 12 L. ed. 1201; *Roberts v. Washbourne*, 10 Minn. 33; *Enfield Toll Bridge Co. v. Hartford etc. R. R. Co.*, 17 Conn. 40, 42 Am. Dec. 716.

⁷⁶⁴ *People v. Mayor*, 32 Barb. 102; *State v. Hudson*, 23 N. J. 206, 24 N. J. 718.

⁷⁶⁵ *City v. Erie Canal Co.*, 59 Pa. St. 114. See, also, *Meadville v. Erie Canal Co.*, 18 Pa. St. 66.

⁷⁶⁶ *Bailey v. Railroad Co.*, 4 Harr. 389, 44 Am. Dec. 593.

⁷⁶⁷ *Nichols v. Bertram*, 20 Mass. 342.

⁷⁶⁸ *People v. City of New York*, 32 Barb. 102.

⁷⁶⁹ *Commonwealth v. Covington etc. Bridge Co.*, 14 Ky. Law Rep. 836, 21 S. W. 1042.

⁷⁷⁰ *Covington etc. Co. v. Sandford*, 164 U. S. 578, 17 S. Ct. 193, 41 L. ed. 560.

⁷⁷¹ *Parker v. Metropolitan R. R. Co.*, 109 Mass. 506; *People v. City of New York*, 32 Barb. 102.

⁷⁷² *Charles River Bridge Co. v. Warren Bridge*, 11 Pet. 544, 551, 59 L. ed. 773; *In re Hamilton Av.*, 14 Barb. 405; *Oswego Bridge Co.*

bridge does not impliedly prohibit a free bridge in the same locality,⁷⁷³ or the subsequent licensing of another toll bridge,⁷⁷⁴ or of a ferry.⁷⁷⁵ So also a franchise to operate a ferry in the neighborhood of a prior ferry does not impair any obligation in the ferry franchise,⁷⁷⁶ and the licensing of one ferry cannot preclude the licensing of a second parallel ferry.⁷⁷⁷ A ferry franchise granted to a municipality may be altered or revoked altogether.⁷⁷⁸

A franchise may, however, be, in terms, exclusive, and when this is so a contract exists which the legislature cannot impair.⁷⁷⁹ As against such a charter or franchise another ferry,

v. Fish, 1 Barb. Ch. 547; *Fitch v. Railroad Co.*, 30 Conn. 38; *Harrison v. Young*, 9 Ga. 151; *Illinois etc. Canal Co. v. Railroad Co.*, 14 Ill. 314; *Curtis v. Morehouse*, 12 La. Ann. 649; *Bush v. Peru Bridge Co.*, 3 Ind. 21; *Collins v. Sherman*, 31 Miss. 679; *Mohawk Bridge Co. v. Railroad Co.*, 6 Paige, 544; *Fort Plain Bridge Co. v. Smith*, 30 N. Y. 44; *Thompson v. Railroad Co.*, 3 Sand. Ch. 625.

⁷⁷³ *Victoria Co. v. Bridge Co.*, 68 Tex. 67, 4 S. W. 141; *Fall v. Sutter County*, 21 Cal. 252; *Fort Plain Bridge Co. v. Smith*, 30 N. Y. 61; *Turnpike Co. v. Montgomery County*, 100 Tenn. 422, 45 S. W. 346.

⁷⁷⁴ *Janesville Bridge Co. v. Stoughton*, 1 Pinn. 672; *Shorter v. Smith*, 9 Ga. 524.

⁷⁷⁵ *Carrow v. Washington Toll Bridge*, Phill. (N. C.) 119. See, also, *Bridge Co. v. Spaulding*, 63 N. H. 299.

⁷⁷⁶ *East Hartford v. Hartford Bridge Co.*, 10 How. 533, 13 L. ed. 518; *Kansas etc. Ry. v. Payne*, 49 Fed. 119; *Bush v. Peru Bridge Co.*, 3 Ind. 22; *Harrison v. Young*, 9 Ga. 364; *Piott v. Covington etc. Bridge*, 8 Bush (Ky.), 37; *Collins v. Sherman*, 31 Miss. 700.

⁷⁷⁷ *Mills v. St. Clair County*, 8 How. 581, 12 L. ed. 1201; *Barlington v. Neuse etc. Ferry*, 69 N. C. 172; *Gibbes v. Town Council of Beaufort*, 21 S. C. 217; *Knott v. Jefferson etc. Ferry*, 9 Or. 535; *Min-turn v. Larue*, 1 McCall, 376, Fed. Cas. No. 9646.

⁷⁷⁸ *East Hartford v. Hartford Bridge Co.*, 10 How. 533, 13 L. ed. 518.

⁷⁷⁹ *Bridge Proprietors v. Hoboken County*, 1 Wall. 116, 17 L. ed. 571; *Conway v. Taylor*, 1 Black, 603, 17 L. ed. 191; *McRee v. Wilmington etc. Co.*, 2 Jones (N. C.), 186; *Enfield etc. Bridge v. Hartford etc. Co.*, 17 Conn. 40, 42 Am. Dec. 716; *Hartford B. Co. v. Union F. Co.*, 29 Conn. 210; *Commonwealth v. New Bedford Br.*, 68 Mass. 339; *Mohawk Bridge Co. v. Utica etc. Co.*, 6 Paige, 564; *Thompson v. New York etc. Co.*, 3 Sand. Ch. 625; *Trustees of Newport*

whether free or for hire, is prohibited,⁷⁸⁰ as also is a toll bridge within the limits of the exclusive ferry grant.⁷⁸¹ But the prohibition in toll bridge franchises has been construed not to prevent the erection of railroad bridges within the prescribed limits.⁷⁸² A ferry license granted early in Virginia was declared to have conferred no exclusive rights precluding competition.⁷⁸³ The construction of a railroad bridge is not a violation of the exclusive right to construct a bridge for carriages in common use.⁷⁸⁴

Turnpike and Canal Companies.

The charters of canal and turnpike companies, like other charters, are contracts within the meaning of the obligation clause.⁷⁸⁵ The legislature cannot require a canal corporation to keep in repair the bridges connecting the highways intersected by its canal where no such requirement is made in the charter.⁷⁸⁶ A statute conferring the right to collect tolls is a grant protected by the constitution,⁷⁸⁷ and where the charter of a turnpike company authorizes it to collect tolls from all

v. Taylor, 6 J. J. Marsh, 134; Commonwealth v. Bacon, 13 Bush, 212, 26 Am. Rep. 189; Murray v. Menefee, 20 Ark. 566; Mills v. County of St. Clair, 2 Gilm. 228; Davis v. Police Jury, 1 La. Ann. 296; Costor v. Brush, 25 Wend. 631.

⁷⁸⁰ Aiken v. Western R. R., 20 N. Y. 380.

⁷⁸¹ Mason v. Harper's Ferry Bridge Co., 17 W. Va. 42.

⁷⁸² Lake v. Virginia etc. R. R., 7 Nev. 299; McLeod v. Savannah etc. R. R., 25 Ga. 457; Proprietors v. Hoboken Land Co., 13 N. J. Eq. 526; Thompson v. New York etc. R. R., 3 Sand. Ch. 657.

⁷⁸³ Belmont Bridge v. Wheeling Bridge, 138 U. S. 293, 11 S. Ct. 303, 34 L. ed. 967.

⁷⁸⁴ Bridge Proprietors v. Hoboken etc. Co., 1 Wall. 116, 17 L. ed. 571; McLeod v. Savannah etc. R. R. Co., 25 Ga. 445; Mohawk Bridge Co. v. Railroad Co., 6 Paige, 554; Thompson v. Railroad Co., 3 Sand. Ch. 625.

⁷⁸⁵ Chesapeake & Ohio Canal Co. v. Baltimore etc. R. R. Co., 4 Gill & J. 1; City of Erie v. Erie Canal Co., 59 Pa. St. 174; Hartman v. Bechtel, 1 Woodw. Dec. 32; Philadelphia etc. Co. v. Gortland, 6 Phila. 128; Pingry v. Washburn, 1 Aik. 264, 15 Am. Dec. 676.

⁷⁸⁶ City of Erie v. Erie Canal Co., 59 Pa. St. 174. And see Meadville v. Erie Canal Co., 18 Pa. St. 66.

⁷⁸⁷ Derby Turnpike Co. v. Parks, 10 Conn. 522, 27 Am. Dec. 700.

persons without exception, a subsequent act exempting certain classes of persons is void.⁷⁸⁸ So also is a statute authorizing commissioners to examine turnpike roads and throw open gates if the roads are not found in repair;⁷⁸⁹ but it is within the power of the legislature to appoint commissioners with power to direct repairs.⁷⁹⁰ The legislature cannot require a turnpike company to set back its gates located in accordance with the terms of its charter.⁷⁹¹ There is no implied contract of an exclusive grant to a turnpike company, or that it shall be free from the exercise of the governmental right of eminent domain.⁷⁹²

There can be no implication of exclusive rights in favor of turnpike companies as against other turnpikes or railroads,⁷⁹³ or as against individuals,⁷⁹⁴ or in favor of a canal company as against a railroad subsequently chartered.⁷⁹⁵ So the licensing of a new road or canal materially diverting travel or business from an old one established under a prior charter is not unconstitutional unless the franchise is defined or made exclusive,⁷⁹⁶ and this is true notwithstanding the competition thus

⁷⁸⁸ *Hartman v. Bechtel*, 1 Woodw. Dec. 32; *Philadelphia etc. Co. v. Gortland*, 6 Phila. 128; *Pingry v. Washburn*, 1 Aik. 204, 15 Am. Dec. 676.

⁷⁸⁹ *Powel v. Sammons*, 31 Ala. 552.

⁷⁹⁰ *State v. Bosworth*, 13 Vt. 402.

⁷⁹¹ *White's Creek Turnpike Co. v. Davidson Co.*, 3 Tenn. Ch. 396.

⁷⁹² *White River Turnpike Co. v. Vermont etc. R. R. Co.*, 21 Vt. 590.

⁷⁹³ *Douglass County Road Co. v. C. & G. R. Co.*, 8 Or. 108; *Canyonville etc. Road Co. v. Stephenson*, 8 Or. 267; *Turnpike Co. v. Montgomery County*, 100 Tenn. 422, 45 S. W. 346; *Turnpike Co. v. Davidson*, 91 Tenn. 294, 18 S. W. 627; *Salem etc. Co. v. Lynne*, 18 Conn. 457; *White River Turnpike Co. v. Vermont etc. R. R.*, 21 Vt. 595.

⁷⁹⁴ *Indian etc. Road v. Robinson*, 13 Cal. 519; *Bartram v. Central Turnpike Co.*, 35 Cal. 287; *Crawfordsville etc. Co. v. Smith*, 89 Ind. 295; *Auburn etc. Plank Road v. Douglass*, 9 N. Y. 452.

⁷⁹⁵ *Illinois etc. Canal v. Chicago etc. R. R.*, 14 Ill. 314; *Tuckahoe Canal Co. v. Railroad Co.*, 11 Leigh, 73, 36 Am. Dec. 378.

⁷⁹⁶ *Turnpike Co. v. Maryland*, 3 Wall. 210, 18 L. ed. 180; *Salem Turnpike Co. v. Town of Lynne*, 18 Conn. 451; *Washington etc. Turnpike Co. v. Baltimore etc. R. R.*, 10 Gill & J. 392; *Illinois etc. Canal v. Chicago etc. R. R.*, 14 Ill. 314; *Tuckahoe Canal Co. v. Tuckahoe etc. R. R. Co.*, 11 Leigh, 42, 36 Am. Dec. 374.

introduced totally destroys the value of the first license.⁷⁹⁷ The legislature cannot, however, authorize the construction of a road the sole purpose of which is to evade turnpike tolls.⁷⁹⁸

A claim of immunity from legislative control of tolls to be exacted by a corporation authorized to construct a road is subject to the same rule of strict interpretation as a grant of immunity from taxation,⁷⁹⁹ and an exemption from the exercise of the state's right in this regard will never be implied from anything short of an explicit unequivocal provision.⁸⁰⁰ A right to levy tolls at all must be expressly granted and will never be implied.⁸⁰¹ It has been held that a turnpike franchise does not, by implication, prohibit an adjoining owner from moving his roadside fence back upon his premises, where his purpose is to gain better access to his outbuildings,⁸⁰² and that the privilege of erecting a toll-gate within two miles of a town means two miles and no nearer.⁸⁰³ A canal company with a charter right to collect tolls in certain cases, which are enumerated, is impliedly prohibited from exacting tolls in others.⁸⁰⁴

Railroad Corporations.

A charter granted to a railroad corporation is a contract,⁸⁰⁵ and a franchise granted to one railroad cannot be revoked or

⁷⁹⁷ *Hyde's Ferry Turnpike Co. v. Davidson County*, 91 Tenn. 291, 18 S. W. 626.

⁷⁹⁸ *Hyde's Ferry Turnpike Co. v. Davidson County*, 91 Tenn. 291, 18 S. W. 626.

⁷⁹⁹ *Covington Turnpike Co. v. Sandford*, 164 U. S. 578, 17 S. Ct. 198, 41 L. ed. 560.

⁸⁰⁰ *Ruggles v. Illinois*, 108 U. S. 531, 2 S. Ct. 836, 27 L. ed. 812; *Stone v. Farmers' Loan etc. Co.*, 116 U. S. 326, 6 S. Ct. 342, 29 L. ed. 636; *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 84, 10 S. Ct. 37, 33 L. ed. 267, affirming 129 Pa. St. 200; *Wells-Fargo v. Oregon Ry.*, 8 Saw. 616, 15 Fed. 573; *Atlantic & Pacific Ry. v. United States*, 76 Fed. 192.

⁸⁰¹ *Camden etc. R. R. v. Briggs*, 22 N. J. L. 647.

⁸⁰² *Auburn etc. Plank Road v. Douglass*, 9 N. Y. 452.

⁸⁰³ *State v. Clarksville etc. R. R.*, 2 Sneed, 92.

⁸⁰⁴ *Perrine v. Chesapeake etc. Canal Co.*, 9 How. 192, 13 L. ed. 92; *Sturgeon etc. Canal Co. v. Leatham*, 164 Ill. 243, 45 N. E. 424.

⁸⁰⁵ *Wilmington R. R. v. Reid*, 13 Wall. 266, 20 L. ed. 568; *Pacific R. R. Co. v. Maguire*, 20 Wall. 43, 22 L. ed. 282; *Chicago etc. R. R.*

granted to another.⁸⁰⁶ A franchise to operate a street railroad, if valid when granted, cannot be impaired either by legislative act or judicial decision.⁸⁰⁷ Any act, no matter what its nature, which essentially impairs the franchise is void.⁸⁰⁸ An ordinance which merely amounts to a proposition to grant a franchise, in consideration of the construction and operation of a street railroad, when accepted by performance, becomes a contract unimpaired by the state.⁸⁰⁹

Upon the consolidation of two or more railroad corporations, the franchise granted to the consolidated corporation is subject to the laws in force at the time of the consolidation;⁸¹⁰ the consolidation works their individual dissolution.⁸¹¹

The rule that grants of exclusive franchises are never to be presumed applies as strongly to railroads as to other corporations, and a charter conferring the right to construct a railroad between certain points, contains no implied prohibition against a similar franchise to a competing road,⁸¹² and even

v. Iowa, 94 U. S. 161, 24 L. ed. 94; *New York etc. R. R. v. Pennsylvania*, 153 U. S. 655, 14 S. Ct. 952, 38 L. ed. 846; *Pearsall v. Great Northern Ry.*, 161 U. S. 661, 16 S. Ct. 705, 40 L. ed. 838; *Houston etc. Ry. v. Texas*, 170 U. S. 261, 18 S. Ct. 610, 42 L. ed. 1023.

⁸⁰⁶ *New Orleans etc. R. R. v. Delamore*, 114 U. S. 510, 29 L. ed. 244.

⁸⁰⁷ *Chicago v. Sheldon*, 9 Wall. 55, 19 L. ed. 594.

⁸⁰⁸ *Sloan v. Missouri Pacific R. R.*, 61 Mo. 24, 21 Am. Rep. 397; *Philadelphia etc. R. R. v. Bowers*, 4 Houst. 506.

⁸⁰⁹ *City Ry. v. Citizens' R. R.*, 166 U. S. 567, 17 S. Ct. 653, 41 L. ed. 1114.

⁸¹⁰ *Railroad Co. v. Maine*, 96 U. S. 510, 24 L. ed. 836; *Pullman Car Co. v. Missouri etc. R. R. Co.*, 115 U. S. 594, 6 S. Ct. 197, 29 L. ed. 499; *Market St. R. R. Co. v. Hellman*, 109 Cal. 587, 42 Pac. 230; *State v. Keokuk etc. R. R. Co.*, 99 Mo. 41, 12 S. W. 292, 6 L. R. A. 222.

⁸¹¹ *Shields v. Ohio*, 95 U. S. 323, 24 L. ed. 357; *Chesapeake etc. Ry. v. Miller*, 114 U. S. 188, 5 S. Ct. 819, 29 L. ed. 121; *Wabash etc. R. R. Co. v. Ham*, 114 U. S. 595, 5 S. Ct. 1085, 29 L. ed. 235; *Keokuk etc. R. R. Co. v. Missouri*, 152 U. S. 310, 14 S. Ct. 595, 38 L. ed. 450; *Smith v. Lake Shore etc. Ry. Co.*, 114 Mich. 462, 72 N. W. 331; *Montclair v. New York etc. Ry.*, 45 N. J. Eq. 442, 18 Atl. 244; *Miner v. New York etc. R. R.*, 123 N. Y. 251, 25 N. E. 341.

⁸¹² *Richmond etc. R. R. v. Louisiana etc. R. R.*, 13 How. 71, 14 L. ed. 55; *State v. Noyes*, 47 Me. 189; *Baltimore etc. R. R. v. State*,

when the right granted is expressly made exclusive between certain terminal points, it is not so between intermediate points.⁸¹³ An express company's charter does not contain any contract that the state will not permit a railroad company to compete with it.⁸¹⁴ There is no implied contract in a railroad charter that the state will never place any restrictions upon its assumed power to consolidate,⁸¹⁵ or to lease property or lines,⁸¹⁶ or to join with other roads in constructing a through line.⁸¹⁷

A state may regulate the rates to be charged by a railroad for the transportation of freight and passengers, unless restrained by some positive provision in the charter;⁸¹⁸ and its power in this regard is not affected by the fact that the corporation's income has been pledged to meet obligations incurred on the faith of the charter.⁸¹⁹ Railroads, being highways of commerce, are not for all purposes private property—possessing a public character they are subject to public supervision,⁸²⁰ and an exemption from the exercise of this power

45 Md. 596; *Boston etc. Corp. v. Boston & Maine R. R.*, 5 Cush. 275; *Connecting Ry. Co. v. Union Ry. Co.*, 108 Ill. 272; *Collins v. Sherman*, 31 Miss. 700.

⁸¹³ *Delaware etc. Co. v. Baritan etc. Co.*, 16 N. J. Eq. 336, 18 N. J. Eq. 569.

⁸¹⁴ *Cambias v. Philadelphia etc. R. R.*, 4 Fed. Cas. 1102.

⁸¹⁵ *East etc. Ry. v. Rushing*, 69 Tex. 314, 6 S. W. 387.

⁸¹⁶ *Bardin v. Northern Pacific R. R.*, 154 U. S. 325, 14 S. Ct. 1037, 38 L. ed. 992, reversing 46 Fed. 611.

⁸¹⁷ *Pennsylvania R. R. v. National R. R.*, 23 N. J. Eq. 455.

⁸¹⁸ *Chicago etc. R. R. v. Iowa*, 94 U. S. 155, 24 L. ed. 94; *Winona etc. R. R. Co. v. Blake*, 94 U. S. 180, 24 L. ed. 99, affirming 19 Minn. 418, 18 Am. Rep. 345; *Ruggles v. Illinois*, 108 U. S. 526, 2 S. Ct. 832, 27 L. ed. 812; *Burlington etc. Ry. Co. v. Dey*, 82 Iowa, 312, 48 N. W. 98, 31 Am. St. Rep. 477, 12 L. R. A. 436; *American Coal Co. v. Consolidated Coal Co.*, 46 Md. 15; *Owen v. St. Louis etc. R. R.*, 83 Mo. 454; *Attorney General v. Chicago etc. Ry. Co.*, 35 Wis. 425.

⁸¹⁹ *Chicago etc. R. R. v. Iowa*, 94 U. S. 155, 24 L. ed. 94.

⁸²⁰ *Chicago etc. R. R. v. Iowa*, 94 U. S. 155, 24 L. ed. 94; *Dow v. Beidelman*, 125 U. S. 686, 8 S. Ct. 1028, 31 L. ed. 680; *Chicago etc. R. R. v. Jones*, 149 Ill. 377, 41 Am. St. Rep. 285, 37 N. E. 251, 24 L. R. A. 141; *Wellman v. Railway Co.*, 83 Mich. 611, 47 N. W. 494; *Pingree v. Michigan etc. R. R. Co.*, 118 Mich. 323, 76 N. W. 638,

will never be presumed.⁸²¹ So a statute authorizing a railroad company's directors "to adopt and establish such a tariff of charges for the transportation of persons and property as they may think proper, and the same to alter and change at pleasure," has been held not to constitute an adequate surrender of the legislative power to regulate.⁸²² A railroad charter giving an exclusive right to carry persons and property, "provided that the charge of transportation or conveyance shall not exceed" specified rates, does not preclude the establishment of other and lower rates by the state,⁸²³ nor does a charter giving a railroad corporation power to fix its own rates, providing they shall not be unreasonable, surrender the power of the state to regulate.⁸²⁴ A charter provision authorizing the directors to make such by-laws as may be expedient, not repugnant to the laws of the state, contemplates subsequent as well as prior laws, and therefore does not preclude the passage of an act establishing rates.⁸²⁵

It is competent for the state to empower a corporation absolutely to fix its own rates, and where this is done expressly, any attempt to change the rates by the state impairs a contract obligation.⁸²⁶ But notwithstanding such power is given to a

59 L. R. A. 274; *Atlantic Express Co. v. Railroad Co.*, 111 N. C. 472, 32 Am. St. Rep. 806, 16 S. E. 393, 18 L. R. A. 393; *Pittsburg etc. R. R. v. Southwestern Pennsylvania R. R. Co.*, 77 Pa. St. 173.

⁸²¹ *Ruggles v. Illinois*, 108 U. S. 531, 2 S. Ct. 836, 27 L. ed. 812; *Stone v. Farmers' Loan etc. Co.*, 116 U. S. 326, 6 S. Ct. 342, 29 L. ed. 636; *Wells-Fargo v. Oregon Ry.*, 8 Saw. 616, 15 Fed. 573; *Pennsylvania R. R. v. Miller*, 132 U. S. 84, 10 S. Ct. 37, 33 L. ed. 267.

⁸²² *Stone v. Illinois Cent. R. R. Co.*, 116 U. S. 347, 6 S. Ct. 348, 29 L. ed. 636. And see *Stone v. New Orleans etc. R. R. Co.*, 116 U. S. 352, 6 S. Ct. 349, 29 L. ed. 651.

⁸²³ *Georgia R. R. etc. Co. v. Smith*, 128 U. S. 174, 9 S. Ct. 47, 32 L. ed. 377; *Dow v. Beidelman*, 49 Ark. 325, 5 S. W. 297.

⁸²⁴ *Chicago etc. Ry. v. Minnesota*, 134 U. S. 418, 10 S. Ct. 462, 33 L. ed. 970.

⁸²⁵ *Chicago etc. R. R. Co. v. Jones*, 149 Ill. 361, 41 Am. St. Rep. 278, 37 N. E. 247, 24 L. R. A. 141.

⁸²⁶ *Ex parte Koehler*, 23 Fed. 529; *Philadelphia etc. Ry. Co. v. Bowers*, 4 Houst. 506; *Hamilton v. Keith*, 5 Bush (Ky.), 458; *Attorney General v. Chicago etc. Ry. Co.*, 35 Wis. 425; *Sloan v. Missouri etc. R. R. Co.*, 61 Mo. 24, 21 Am. Rep. 397.

railway company by charter, the state may create a commission to prevent unjust discriminations,⁸²⁷ and may impose a penalty for taking unlawful toll or freight.⁸²⁸ The reservation of power to amend or repeal corporate charters gives the legislature power to alter rates at pleasure without contravening the obligation clause,⁸²⁹ and the fact that the state does not exercise this reserved power for years after a charter is granted does not affect the power; a governmental power cannot be lost by nonuser.⁸³⁰

Railroad corporations are always amenable to the state's police power, notwithstanding any charter provisions to the contrary.⁸³¹ Under this power the legislature may provide for the appointment of commissioners to determine the duties and obligation of railroad companies,⁸³² or may forbid the construction of a track where it will endanger safe and convenient access to a depot,⁸³³ or may require railroads to build depots at certain places and stop thereat.⁸³⁴ Such regulations are reasonable and clearly within the police power.⁸³⁵ If a com-

⁸²⁷ *Chicago etc. R. R. v. People*, 67 Ill. 11; *Vincent v. Chicago etc. R. R. Co.*, 49 Ill. 33; *Chicago etc. R. R. v. People*, 56 Ill. 365, 8 Am. Rep. 690; *Stone v. Yazoo etc. R. R. Co.*, 62 Miss. 607, 52 Am. Rep. 193.

⁸²⁸ *Camden etc. R. R. Co. v. Briggs*, 22 N. J. 623; *Norris v. Androscoggin R. R. Co.*, 39 Me. 273, 63 Am. Dec. 621.

⁸²⁹ *Peik v. Chicago etc. R. R. Co.*, 94 U. S. 164, 24 L. ed. 97; *Stone v. New Orleans etc. R. R. Co.*, 116 U. S. 352, 6 S. Ct. 349, 29 L. ed. 651; *St. Louis etc. Ry. Co. v. Gill*, 54 Ark. 101, 15 S. W. 18, 11 L. R. A. 452; *Shields v. State*, 26 Ohio St. 86.

⁸³⁰ *Chicago etc. Ry. Co. v. Iowa*, 94 U. S. 155, 24 L. ed. 94.

⁸³¹ *Chicago etc. R. R. v. Nebraska*, 170 U. S. 73, 42 L. ed. 948; *Toledo etc. R. R. Co. v. City of Jacksonville*, 67 Ill. 37, 16 Am. Rep. 611; *Kansas Pacific Ry. Co. v. Mower*, 16 Kan. 573; *Galena etc. R. R. Co. v. Loomis*, 13 Ill. 548, 56 Am. Dec. 471; *Blake v. Winona etc. R. R. Co.*, 19 Minn. 418, 18 Am. Rep. 345.

⁸³² *Portland R. R. Co. v. Railroad Co.*, 46 Me. 69.

⁸³³ *Portland etc. R. R. Co. v. Boston etc. R. R. Co.*, 65 Me. 122.

⁸³⁴ *Railroad Commrs. v. Portland etc. R. R. Co.*, 63 Me. 269, 18 Am. Rep. 208; *State v. Wabash etc. Ry. Co.*, 83 Mo. 144; *Illinois Central Ry. v. People*, 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119; *Davidson v. State*, 4 Tex. App. 545.

⁸³⁵ *Gladson v. Minnesota*, 166 U. S. 421, 17 S. Ct. 627, 41 L. ed. 1064; *Lake Shore etc. R. R. v. Ohio*, 173 U. S. 301, 19 S. Ct. 465, 41 L. ed. 747.

missioner merely has the power to approve or disapprove the abandonment of a station, his consent is not binding, as a contract, upon the state.⁸³⁶ Statutes regulating the speed of railroad trains are not objectionable under the obligation clause.⁸³⁷

Other instances of the valid exercise of the police power with respect to railroads are laws regulating railroad crossings;⁸³⁸ requiring trains to stop on approaching another railroad crossing;⁸³⁹ or to ring a bell or sound a whistle on approaching crossings;⁸⁴⁰ requiring the erection of fences or cattle-guards;⁸⁴¹ requiring the maintenance of watchmen at certain points;⁸⁴² prohibiting the carrying of freight deemed to be detrimental to public health, morals, or safety, and making railroads liable as insurers of life and limb of passengers;⁸⁴³

⁸³⁶ *State v. New Haven etc. R. R. Co.*, 43 Conn. 351.

⁸³⁷ *Erb v. Morasch*, 177 U. S. 585, 20 S. Ct. 819, 44 L. ed. 897; *Clark v. Boston etc. R. R.*, 64 N. H. 323, 10 Atl. 676; *Chicago etc. R. R. v. Haggerty*, 67 Ill. 113; *Chicago etc. R. R. v. People*, 105 Ill. 657; *Bluedorn v. Missouri Pac. Ry.*, 108 Mo. 239, 32 Am. St. Rep. 615, 18 S. W. 1103.

⁸³⁸ *New York etc. R. R. Co. v. Bristol*, 151 U. S. 556, 14 S. Ct. 437, 39 L. ed. 269; *Philadelphia etc. R. R. v. Southwestern Pennsylvania R. R.*, 77 Pa. St. 173; *Portland etc. R. R. Co. v. Deering*, 78 Me. 61, 2 Atl. 670, 57 Am. Rep. 784.

⁸³⁹ *Chicago etc. R. R. v. Joliet etc. R. R.*, 105 Ill. 105, 44 Am. Rep. 806.

⁸⁴⁰ *Galena etc. R. R. Co. v. Loomis*, 13 Ill. 548, 54 Am. Dec. 471; *Galena etc. R. R. v. Appleby*, 28 Ill. 283.

⁸⁴¹ *Minneapolis etc. R. R. Co. v. Emmons*, 149 U. S. 364, 13 S. Ct. 871, 37 L. ed. 769; *Suydam v. Moore*, 8 Barb. 358; *Waldron v. Railroad Co.*, 8 Barb. 390; *New Albany etc. R. R. v. Tilton*, 12 Ind. 3, 74 Am. Dec. 195; *Madison etc. R. R. v. Whiteneck*, 8 Ind. 217; *Ohio etc. R. R. v. McClelland*, 25 Ill. 140; *Kansas etc. R. R. v. Mower*, 16 Kan. 573; *Jones v. G. etc. R. R. Co.*, 16 Iowa, 6; *Indianapolis etc. R. R. v. Kercheval*, 16 Ind. 84; *Winona etc. R. R. v. Waldron*, 11 Minn. 515, 88 Am. Dec. 100; *Gorman v. Pacific R. R. Co.*, 26 Mo. 441, 72 Am. Dec. 220; *Blair v. Milwaukee etc. R. R. Co.*, 20 Wis. 254; *Pennsylvania etc. R. R. Co. v. Riblet*, 66 Pa. St. 164; *Thorpe v. Rutland etc. R. R.*, 27 Vt. 147, 62 Am. Dec. 625.

⁸⁴² *Lake Shore etc. R. R. Co. v. C. S. etc. R. R. Co.*, 30 Ohio St. 616; *Toledo etc. Ry. Co. v. Jacksonville*, 67 Ill. 37, 16 Am. Rep. 611.

⁸⁴³ *Thorpe v. Rutland etc. R. R. Co.*, 27 Vt. 140, 62 Am. Dec. 625; *Nelson v. Vermont etc. R. R. Co.*, 26 Vt. 717.

making railroads liable for the neglect or misconduct of their employees;⁸⁴⁴ rendering railroads absolutely liable for damages caused by fire started from sparks from their locomotives⁸⁴⁵ or for animals killed by their locomotives;⁸⁴⁶ giving a right of action to the personal representative of one killed in a railroad accident.⁸⁴⁷

The police power cannot, however, be used to cloak regulations tending to impair or destroy charter powers or franchises, without conserving the health, morals or safety of the public.⁸⁴⁸ Accordingly the state cannot order a change in the gauge of a railroad,⁸⁴⁹ or require a railroad to keep a flagman at a place where there is no unusual danger.⁸⁵⁰ An act imposing restrictions upon the conveyance of land to railroads impairs the charter obligation and is void.⁸⁵¹

Amendment or Alteration of Charter.

The legislature is precluded from altering or amending a corporate charter unless such power be reserved by the act of incorporation or by some prior general law.⁸⁵² Such a reservation enters into and becomes a part of the charter of every

⁸⁴⁴ *Boston etc. R. R. Co. v. State*, 32 N. H. 215.

⁸⁴⁵ *Union Pacific Ry. Co. v. De Busk*, 12 Colo. 294, 20 Pac. 752, 3 L. R. A. 350; *Mathews v. St. Louis etc. R. R. Co.*, 121 Mo. 298, 24 S. W. 591, 25 L. R. A. 161; *Lyman v. B. etc. R. R. Co.*, 58 Mass. 288; *Rademacher v. M. etc. R. R. Co.*, 41 Iowa, 297, 20 Am. Rep. 592; *Mobile etc. Ins. Co. v. Columbia etc. R. R. Co.*, 41 S. C. 408, 44 Am. St. Rep. 725, 19 S. E. 858.

⁸⁴⁶ *Indianapolis etc. R. R. v. Kercheval*, 16 Ind. 84.

⁸⁴⁷ *Southwestern R. R. Co. v. Paulk*, 24 Ga. 356.

⁸⁴⁸ *Philadelphia etc. Ry. Co. v. Bowers*, 4 Houst. 506; *Town of Lake View v. Rose Hill Cemetery Co.*, 70 Ill. 191, 22 Am. Rep. 71; *Sloan v. Pacific R. R.*, 61 Mo. 24, 21 Am. Rep. 397.

⁸⁴⁹ *State v. Richmond etc. R. R. Co.*, 73 N. C. 527, 21 Am. Rep. 473.

⁸⁵⁰ *Toledo etc. R. R. v. Jacksonville*, 67 Ill. 37, 16 Am. Rep. 611.

⁸⁵¹ *De Graff v. St. Paul etc. R. R. Co.*, 23 Minn. 144.

⁸⁵² *Holyoke Co. v. Lyman*, 15 Wall. 511, 21 L. ed. 133; *Greenwood v. Freight Co.*, 105 U. S. 17, 26 L. ed. 961; *New Jersey v. Yard*, 95 U. S. 113, 24 L. ed. 352.

corporation organized subject to it,⁸⁵³ and no question of the impairment of contract obligations can arise where a corporation has accepted its charter subject to the state's power to alter or amend it.⁸⁵⁴ The obligation clause does not prevent the amendment or alteration of a charter with the consent of the corporation.⁸⁵⁵ There is nothing to preclude the waiver of the protection of this clause by the stockholders,⁸⁵⁶ and this waiver may be evidenced by an express request for the amendment or by expressly accepting, or acting on and acquiescing in, one made without such request.⁸⁵⁷ There must, however, be an acceptance of the amendatory act.⁸⁵⁸ If an amendment is accepted by a corporate vote as an amendment to the original charter, it is not a violation of the charter.⁸⁵⁹ The assent re-

⁸⁵³ *Miller v. State*, 15 Wall. 495, 21 L. ed. 98; *Chicago etc. Ry. Co. v. Minnesota*, 134 U. S. 455, 10 S. Ct. 462, 33 L. ed. 970; *Hamilton Gaslight etc. Co. v. Hamilton City*, 146 U. S. 270, 13 S. Ct. 90, 36 L. ed. 963; *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 83, 10 S. Ct. 34, 33 L. ed. 267; *Citizens' Savings Bank v. Owensboro*, 173 U. S. 644, 19 S. Ct. 530, 43 L. ed. 840.

⁸⁵⁴ *Sioux City Street Ry. Co. v. Sioux City*, 138 U. S. 108, 11 S. Ct. 226, 34 L. ed. 898; *Bienville etc. Water Co. v. Mobile*, 186 U. S. 222, 22 S. Ct. 820, 46 L. ed. 1132.

⁸⁵⁵ *People v. Marshall*, 1 Gilm. 672; *Commonwealth v. Jarvis*, 1 Mon. 5; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 375, 47 Am. Dec. 474; *Ehrenzeller v. Canal Co.*, 1 Rawle, 181; *Trustees v. Winston*, 5 Stew. & P. 17.

⁸⁵⁶ *State v. Montgomery Light Co.*, 102 Ala. 594, 15 South. 347.

⁸⁵⁷ *Smead v. Indianapolis etc. Ry. Co.*, 11 Ind. 104; *Pennsylvania R. R. Co. v. Duncan*, 111 Pa. St. 352, 5 Atl. 742; *Monongahela Bridge Co. v. Pittsburgh etc. Ry. Co.*, 114 Pa. St. 478, 8 Atl. 233; *Attorney General v. Clergy Soc.*, 10 Rich. Eq. 604.

⁸⁵⁸ *Pingry v. Washburn*, 1 Aik. 264, 15 Am. Dec. 676; *Commonwealth v. Cullen*, 13 Pa. St. 133, 53 Am. Dec. 450; *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229. But see *State v. Adams*, 44 Mo. 570.

⁸⁵⁹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L. ed. 629; *Mumma v. Potomac Co.*, 8 Pet. 286, 8 L. ed. 945; *Pennsylvania College Cases*, 13 Wall. 213, 20 L. ed. 550; *Joy v. Jackson County*, 11 Mich. 155; *Riddle v. Locks & Canals*, 7 Mass. 169; *McLaren v. Pennington*, 1 Paige, 107; *Monongahela Nav. Co. v. Coor*, 6 Pa. St. 379, 47 Am. Dec. 474; *Commonwealth v. Cullen*, 13 Pa. St. 133, 53 Am. Dec. 450; *Woodford v. Union Bank*, 3 Cold. 498; *Zabriskie v. Railroad Co.*, 18 N. J. Eq. 186.

lates back to the date of the amendatory law.⁸⁶⁰ Assent cannot be inferred from a misuser or nonuser of a corporation's franchise,⁸⁶¹ although a willful misuser or nonuser of its franchise will subject a corporation to dissolution.⁸⁶² Where the amendment is as to several particulars, the acceptance must be made as it is offered or not at all,⁸⁶³ and if the amendment is accepted upon the terms prescribed, it becomes a compact binding upon all parties;⁸⁶⁴ but an amendment is never binding without acceptance,⁸⁶⁵ unless the power be reserved in the charter or by general law.⁸⁶⁶ The charter of a corporation may even be repealed by an amendment accepted by the corporation.⁸⁶⁷

The rule that assent renders legislation changing a corporate charter valid is subject to the qualification that such legislation must not change the control of the institution, or divert the funds to a use inconsistent with the original purpose,⁸⁶⁸ and in the absence of reserved power to alter or amend, the acceptance, by a majority of the stockholders, of a material, radical, and fundamental change in the charter, can bind only the majority, and will discharge a dissenting subscriber from

⁸⁶⁰ *Ehrenzeller v. Canal Co.*, 1 Bawle, 181.

⁸⁶¹ *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72.

⁸⁶² *Mumma v. Potomac Co.*, 8 Pet. 287, 8 L. ed. 945; *State v. Bryce*, 7 Ohio, pt. 2, 83.

⁸⁶³ *Marietta etc. R. R. Co. v. Elliott*, 10 Ohio St. 57.

⁸⁶⁴ *Crease v. Babcock*, 23 Pick. 334, 34 Am. Dec. 61; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

⁸⁶⁵ *Sage v. Dillard*, 15 B. Mon. 340; *Yeaton v. Bank*, 21 Gratt. 593; *Troy v. Rutland etc. R. R. Co.*, 17 Barb. 591; *White v. Railroad Co.*, 14 Barb. 559; *Mayor etc. v. Norwich etc. R. R. Co.*, 109 Mass. 103; *Thornton v. Marginal F. R. Co.*, 123 Mass. 32.

⁸⁶⁶ *Pennsylvania College Cases*, 13 Wall. 213, 20 L. ed. 550; *Tomlinson v. Jessup*, 15 Wall. 459, 21 L. ed. 204; *Miller v. State*, 15 Wall. 478, 21 L. ed. 98; *Holyoke Co. v. Lyman*, 15 Wall. 500, 21 L. ed. 133; *Washington Bridge Co. v. State*, 18 Conn. 64; *Enfield T. B. Co. v. Hartford R. R. Co.*, 17 Conn. 59; *Bronson v. Taylor*, 33 Conn. 116; *M. & E. R. R. Co. v. Commissioners*, 37 N. J. 228.

⁸⁶⁷ *Mobile etc. R. R. Co. v. State*, 29 Ala. 573; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379, 47 Am. Dec. 474.

⁸⁶⁸ *Pennsylvania College Cases*, 13 Wall. 213-220, 20 L. ed. 550.

his contract of subscription.⁸⁶⁹ The legislature cannot in its amendatory act authorize the majority to accept the amendment against the will of the minority.⁸⁷⁰ Where, however, the change accepted by the majority merely clothes the corporation with privileges and immunities in furtherance of the corporate object, a stockholder cannot make the change an excuse for avoiding his obligations.⁸⁷¹ Where the stockholders have subscribed under a charter allowing the majority to bind all, there can be no objection to the majority acceptance of an amendment.⁸⁷²

Instances of fundamental changes within this rule are: amendments altering the general course or direction of a railroad authorized by charter;⁸⁷³ changing the terminus of the road as fixed by the charter;⁸⁷⁴ authorizing consolidation with another corporation;⁸⁷⁵ changing the visitorial power in an eleemosynary corporation;⁸⁷⁶ reducing the minimum number of subscribed shares necessary, thus rendering one liable on his subscription.⁸⁷⁷ Any amendment radically changing the original scheme is fundamental.⁸⁷⁸ The test seems to be whether

⁸⁶⁹ *Clearwater v. Meredith*, 1 Wall. 40, 17 L. ed. 604; *Railway Co. v. Allerton*, 18 Wall. 233, 21 L. ed. 902; *Printing House v. Trustees*, 104 U. S. 711, 26 L. ed. 902; *Mowrey v. Indianapolis etc. R. R. Co.*, 4 Biss. 86, Fed. Cas. No. 9891; *Ashton v. Burbank*, 2 Dill. 435.

⁸⁷⁰ *New Orleans etc. Ry. Co. v. Harris*, 27 Miss. 517.

⁸⁷¹ *Fry v. Lexington etc. R. R. Co.*, 2 Met. (Ky.) 322; *Waring v. Mayor etc.*, 24 Ala. 201; *Everhart v. Westchester etc. R. R. Co.*, 28 Pa. St. 339; *Poughkeepsie etc. Plank-Road Co. v. Griffin*, 24 N. Y. 150; *Fall River Iron Works v. Old Colony R. R. Co.*, 5 Allen, 221; *Peoria v. Preston*, 35 Iowa, 115.

⁸⁷² *Witter v. Mississippi etc. R. R.*, 20 Ark. 463.

⁸⁷³ *Hester v. Memphis etc. R. R.*, 32 Miss. 380; *Winter v. Muskogee R. R. Co.*, 11 Ga. 45; *Buffalo etc. R. R. Co. v. Pottle*, 23 Barb. 21.

⁸⁷⁴ *Marietta etc. R. R. v. Elliott*, 10 Ohio St. 57; *Middlesex Turnpike Co. v. Locke*, 8 Mass. 267; *Plankroad etc. Co. v. Arndt*, 31 Pa. St. 317; *Thompson v. Guion*, 5 Jones Eq. 113.

⁸⁷⁵ *Clearwater v. Meredith*, 1 Wall. 40, 17 L. ed. 604; *Pearce v. Madison R. R. Co.*, 21 How. 441, 16 L. ed. 184; *Mowrey v. Indianapolis etc. R. R. Co.*, 4 Biss. 83, Fed. Cas. No. 9891; *Tuttle v. Michigan Air-Line*, 35 Mich. 247; *New Jersey etc. Co. v. Strait*, 35 N. J. L. 322.

⁸⁷⁶ *Printing House v. Trustees*, 104 U. S. 727, 26 L. ed. 902.

⁸⁷⁷ *Old Town R. R. Co. v. Veazie*, 39 Me. 571.

⁸⁷⁸ *Black v. Delaware & Raritan Canal Co.*, 24 N. J. Eq. 455.

the general interests of the corporation have been sacrificed by the change, and whether the profits have been lessened.⁸⁷⁹

The legislature cannot amend a charter so as to restrict the use of corporate property,⁸⁸⁰ nor give property to a public purpose for a use entirely different and inconsistent with the original use.⁸⁸¹ Nor can an officer of a corporation be deprived of his office by an amendment of the charter.⁸⁸² A public statute which provides how charters may be amended is not a contract.⁸⁸³ A power to alter or amend is not ordinarily a power to repeal or a power to destroy.⁸⁸⁴ The legislature may modify or repeal a charter before its acceptance, and before rights have been acquired under it.⁸⁸⁵

— Reserved Power to Alter or Amend.

The reservation of this power in the state constitution, or in general laws on the subject of corporations or in the special act of incorporation, relieves amendatory legislation from the operation of this clause of the constitution.⁸⁸⁶ Acts of incor-

⁸⁷⁹ *Fry v. Lexington etc. R. R. Co.*, 2 Met. (Ky.) 322; *Wilson v. Wills Valley R. R. Co.*, 33 Ga. 466; *Irvine v. Turnpike Co.*, 2 Penr. & W. 474; *Barrett v. Alton etc. R. R.*, 13 Ill. 504.

⁸⁸⁰ *Commonwealth v. Bacon*, 13 Bush (Ky.), 210, 26 Am. Rep. 189.

⁸⁸¹ *Jacksonville v. Jacksonville Co.*, 67 Ill. 540.

⁸⁸² *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229.

⁸⁸³ *State v. New Haven etc. R. R. Co.*, 43 Conn. 351.

⁸⁸⁴ *Hartford Br. Co. v. East Hartford*, 16 Conn. 149.

⁸⁸⁵ *Louisville etc. R. R. Co. v. Kentucky*, 161 U. S. 674, 16 S. Ct. 714, 40 L. ed. 849; *Pearsall v. Great Northern Ry. Co.*, 161 U. S. 659, 16 S. Ct. 705, 40 L. ed. 838; *Galveston etc. Ry. v. Texas*, 179 U. S. 239, 18 S. Ct. 603, 42 L. ed. 1017; *Cincinnati etc. R. R. Co. v. Clifford*, 113 Ind. 460, 15 N. E. 524; *Chesapeake etc. Canal Co. v. Baltimore etc. R. R. Co.*, 4 Gill & J. 1; *State v. Baltimore etc. R. R. Co.*, 12 Gill & J. 399, 38 Am. Dec. 319; *In re New York Cable Ry. Co.*, 40 Hun, 1.

⁸⁸⁶ *Sherman v. Smith*, 1 Black, 592, 17 L. ed. 163; *Pennsylvania College Cases*, 13 Wall. 212, 20 L. ed. 550; *Miller v. State*, 15 Wall. 495, 21 L. ed. 98; *Holyoke Co. v. Lyman*, 15 Wall. 522, 21 L. ed. 133; *Stone v. Wisconsin*, 94 U. S. 182, 24 L. ed. 102; *Railway Co. v. Philadelphia*, 101 U. S. 539, 25 L. ed. 912; *Close v. Glenwood Cemetery*, 107 U. S. 476, 2 S. Ct. 274, 27 L. ed. 408; *Sioux City Street Ry. v. Sioux City*, 138 U. S. 108, 11 S. Ct. 226, 34 L. ed. 898; *Waters-Pierce*

poration subsequent to the adoption of a state constitution are to be construed as if containing the constitutional provisions applicable to them,⁸⁸⁷ and a corporation takes its charter subject to such provisions in the constitution and to prior general laws, and cannot object to future changes therein;⁸⁸⁸ by accepting its charter under such circumstances the corporation assents to the reservation.⁸⁸⁹

When the power is attempted to be exercised it is immaterial how harshly it may affect the particular case or the parties interested;⁸⁹⁰ the exercise of the power cannot be affected by the fact that injustice may be done.⁸⁹¹ Where the power to alter or amend is not reserved in the state constitution the question is always, whether the legislature intended it to inhere in the charter itself, and it requires strong implication to make a reserving act applicable to subsequent supplements to existing charters.⁸⁹² A provision in a corporate charter that it shall not be altered in any other manner than by an act of the legislature is equivalent to an express reservation to the state of the right to alter or amend at will.⁸⁹³

Oil Co. v. Texas, 177 U. S. 47, 20 S. Ct. 518, 44 L. ed. 657; *Bienville Water etc. Co. v. Mobile*, 186 U. S. 222, 22 S. Ct. 820, 46 L. ed. 1132.

⁸⁸⁷ *Railway Co. v. Philadelphia*, 101 U. S. 539, 25 L. ed. 912; *Mayor v. Twenty-third Street Ry. Co.*, 113 N. Y. 318, 21 N. E. 62; *State v. Hilbert*, 72 Wis. 193, 39 N. W. 329.

⁸⁸⁸ *Spring Valley Waterworks v. Schottler*, 110 U. S. 348, 4 S. Ct. 48, 28 L. ed. 173; *Chicago etc. R. R. Co. v. Minnesota*, 134 U. S. 455, 10 S. Ct. 462, 33 L. ed. 970; *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 83, 10 S. Ct. 34, 33 L. ed. 267; *Citizens' Savings Bank v. Owensboro*, 173 U. S. 644, 19 S. Ct. 530, 43 L. ed. 840.

⁸⁸⁹ *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 270, 13 S. Ct. 90, 36 L. ed. 963; *People v. Cook*, 148 U. S. 411, 13 S. Ct. 645, 37 L. ed. 498; *Gulf etc. R. Co. v. Hewes*, 183 U. S. 71, 22 S. Ct. 26, 46 L. ed. 86; *Louisville etc. R. R. Co. v. Kentucky*, 183 U. S. 516, 22 S. Ct. 95, 46 L. ed. 298.

⁸⁹⁰ *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 270, 13 S. Ct. 90, 36 L. ed. 963.

⁸⁹¹ *Bienville Water etc. Co. v. Mobile*, 186 U. S. 223, 22 S. Ct. 820, 46 L. ed. 1132.

⁸⁹² *New Jersey v. Yard*, 95 U. S. 113, 24 L. ed. 352.

⁸⁹³ *Pennsylvania College Cases*, 13 Wall. 214, 20 L. ed. 550; *Houston v. Jefferson College*, 63 Pa. St. 428; *Commonwealth v. Bon-sall*, 3 Whart. 559.

If the power is effectually reserved the legislature may repeal, alter or modify a charter according to the language of the reservation.⁸⁹⁴ The creditors of a corporation cannot object to an amendment or alteration pursuant to this reserved power,⁸⁹⁵ for all persons dealing with a corporation are bound to take notice of the reservation of power to amend or revoke its charter.⁸⁹⁶ The alteration may be made in the charter itself or by a general statute,⁸⁹⁷ or by a change in the state constitution,⁸⁹⁸ and the alteration is binding whether the corporation assents or not.⁸⁹⁹

The reserved power may be exercised at the will of the legislature, notwithstanding the words "at the pleasure of the legislature" are not used in the reserving clause,⁹⁰⁰ and this legislative discretion cannot be interfered with by the courts.⁹⁰¹ But where a railroad is incorporated subject to the consent of a municipal council, reserving the right in the legislature to alter or amend, the municipal council has no such right under

⁸⁹⁴ *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229; *Crease v. Babcock*, 40 Mass. 334, 34 Am. Dec. 61; *Perrin v. Oliver*, 1 Minn. 202; *Delaware R. R. Co. v. Thorp*, 5 Harr. 454; *McLaren v. Pennington*, 1 Paige, 102; *Monongahela Nav. Co. v. Coon*, 6 Pa. St. 379, 47 Am. Dec. 474; *Ferguson v. Miners' etc. Bank*, 3 Sneed, 609; *Stephen v. Smith*, 29 Vt. 160; *Butler v. Walker*, 80 Ill. 345.

⁸⁹⁵ *West Wisconsin R. R. Co. v. Supervisors*, 93 U. S. 595, 23 L. ed. 814; *Read v. Frankfort Bank*, 23 Me. 318.

⁸⁹⁶ *Macon etc. R. R. Co. v. Gibson*, 85 Ga. 1, 21 Am. St. Rep. 135, 11 S. E. 443.

⁸⁹⁷ *Beer Company v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989; *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 83, 10 S. Ct. 34, 33 L. ed. 267; *Looker v. Maynard*, 179 U. S. 54, 21 S. Ct. 21, 45 L. ed. 179; *State v. Commissioners*, 38 N. J. 472; *Bangor R. R. v. Smith*, 47 Me. 34.

⁸⁹⁸ *Spring Valley Waterworks v. Schottler*, 110 U. S. 351, 4 S. Ct. 48, 38 L. ed. 173; *In re Lee's Bank*, 21 N. Y. 9.

⁸⁹⁹ *Hyatt v. Whipple*, 37 Barb. 595; *Hyatt v. Esmond*, 37 Barb. 601; *Mayor v. N. etc. R. R. Co.*, 109 Mass. 103; *Attorney General v. Railroad Co.*, 35 Wis. 425.

⁹⁰⁰ *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 271, 13 S. Ct. 90, 36 L. ed. 963.

⁹⁰¹ *Spring Valley Waterworks v. Schottler*, 110 U. S. 355, 4 S. Ct. 48, 28 L. ed. 173.

the reservation after it has once given its consent.⁹⁰² The power to alter or modify is not exhausted by one alteration.⁹⁰³

While a corporate charter is only a quasi contract where the power to alter or revoke it is reserved to the legislature,⁹⁰⁴ yet this reserved power must be exercised in subjection to the provisions of the federal constitution;⁹⁰⁵ and reasonably, in good faith, and consistent with the object of the incorporation.⁹⁰⁶ It is not competent for the legislature, against the will of some of the stockholders, to change the fundamental character of the corporation,⁹⁰⁷ or to take away or intermeddle with property rights, or annul contracts entered into by a corporation,⁹⁰⁸ or to authorize the taking of corporate property for public use without compensation.⁹⁰⁹ Ordinarily, the question whether the exercise of the reserved power by the legislature is expedient is not judicial;⁹¹⁰ but where the power is

⁹⁰² *City B. R. Co. v. Citizens' B. R. Co.*, 166 U. S. 563, 17 S. Ct. 653, 41 L. ed. 1114.

⁹⁰³ *People v. Hills*, 46 Barb. 340; *Proprietors v. Haskell*, 7 Me. 474; *State v. Commissioners*, 37 N. J. L. 228; *Morris etc. R. R. Co. v. Commissioners*, 37 N. J. L. 228.

⁹⁰⁴ *Wagner Free Institute v. Philadelphia*, 132 Pa. St. 612, 19 Am. St. Rep. 613, 19 Atl. 297.

⁹⁰⁵ *People v. O'Brien*, 111 N. Y. 1, 7 Am. St. Rep. 684, 18 N. E. 702, 2 L. B. A. 255. And see *Railroad Tax Cases*, 13 Fed. 754.

⁹⁰⁶ *Shields v. Ohio*, 95 U. S. 324, 24 L. ed. 357; *Hill v. Glasgow B. R. Co.*, 41 Fed. 616; *United States v. Western Union Tel. Co.*, 50 Fed. 36; *San Joaquin etc. Co. v. Stanislaus County*, 113 Fed. 930; *Leep v. Railway Co.*, 58 Ark. 433, 41 Am. St. Rep. 127, 25 S. W. 83, 23 L. B. A. 264.

⁹⁰⁷ *Buffalo etc. B. R. v. Dudley*, 14 N. Y. 336; *Troy etc. R. R. Co. v. Kerr*, 17 Barb. 581; *White v. Railroad Co.*, 14 Barb. 659; *State v. Adams*, 44 Mo. 576; *Railroad Co. v. Veazie*, 39 Me. 571.

⁹⁰⁸ *Sinking Fund Cases*, 99 U. S. 721, 25 L. ed. 504; *Pearsall v. Great Northern Ry. Co.*, 161 U. S. 660, 16 S. Ct. 708, 40 L. ed. 838; *People ex rel. Schurz v. Cook*, 148 U. S. 397, 13 S. Ct. 645, 37 L. ed. 498; *Allen v. McKean*, 1 Sum. 276, Fed. Cas. No. 229; *Commissioners v. Holyoke Water Power Co.*, 104 Mass. 448, 6 Am. Rep. 250; *Black River Imp. Co. v. Holway*, 87 Wis. 587, 59 N. W. 127.

⁹⁰⁹ *Miller v. Railroad Co.*, 21 Barb. 513.

⁹¹⁰ *Greenwood v. Freight Co.*, 105 U. S. 22, 26 L. ed. 961; *Spring Valley Waterworks v. Schottler*, 110 U. S. 355, 4 S. Ct. 50, 28 L. ed. 173.

limited to alterations that shall work no injustice, it is for the courts to determine whether injustice has been done.⁹¹¹

This reserved power becomes, by operation of law, a part of every contract or mortgage entered into by a corporation,⁹¹² but the power does not extend to the alteration of contracts made pursuant to charter powers.⁹¹³ Where the reservation is contained in a statute all charters subsequently granted are subject to this power,⁹¹⁴ and where the power to alter is reserved, the state may from time to time designate the agents or organs, and prescribe the manner in which the power shall be exercised.⁹¹⁵

— Extent and Exercise of Reserved Power.

Where the power to alter a corporate charter is reserved it may be exercised to almost any extent to carry into effect the original purposes of the grant or to secure due administration of the corporation's affairs;⁹¹⁶ but it must be exercised reasonably, in good faith, and consistent with the object of incorporation,⁹¹⁷ and it should not be allowed to extend beyond the terms

⁹¹¹ *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

⁹¹² *Macon etc. R. R. Co. v. Gibson*, 85 Ga. 1, 21 Am. St. Rep. 135, 11 S. E. 443.

⁹¹³ *Pennsylvania College Cases*, 13 Wall. 214, 20 L. ed. 550; *Territt v. Taylor*, 9 Cr. 43; *Peik v. Chicago etc. R. R. Co.*, 94 U. S. 164, 24 L. ed. 97; *Bank v. McVeigh*, 20 Gratt. 457.

⁹¹⁴ *Sherman v. Smith*, 1 Black, 587, 17 L. ed. 163; *Miller v. State*, 15 Wall. 495, 21 L. ed. 98; *Suydam v. Moore*, 8 Barb. 358; *Griffin v. Kentucky Ins. Co.*, 3 Bush, 592, 96 Am. Dec. 259; *Central Banking Co. v. State*, 54 Ga. 409; *New Orleans v. Santa Anna's Asylum*, 31 La. Ann. 295; *Watson Seminary v. Pike County Court*, 149 Mo. 67, 50 S. W. 882, 45 L. R. A. 675; *State v. Commissioners*, 37 N. J. L. 237; *Fort Plain Bridge v. Smith*, 30 N. Y. 44.

⁹¹⁵ *In re Reciprocity Bank*, 22 N. Y. 9, 29 Barb. 369.

⁹¹⁶ *Miller v. State*, 15 Wall. 498, 21 L. ed. 98; *Holyoke Co. v. Lyman*, 15 Wall. 519, 21 L. ed. 133; *St. Louis etc. Ry. v. Paul*, 64 Ark. 87, 62 Am. St. Rep. 157, 40 S. W. 706, 37 L. R. A. 504; *Macon etc. Ry. v. Gibson*, 85 Ga. 15, 21 Am. St. Rep. 139, 11 S. E. 443; *Attorney General v. Looker*, 111 Mich. 508, 69 N. W. 932; *State v. Brown etc. Co.*, 18 R. I. 26, 25 Atl. 250, 17 L. R. A. 856.

⁹¹⁷ *Shields v. Ohio*, 95 U. S. 324, 24 L. ed. 357; *Hill v. Glasgow R. R. Co.*, 41 Fed. 616; *United States v. Western Union Tel. Co.*,

in which it is expressed.⁹¹⁸ It is no objection to an amendatory law that it may harshly affect the particular case or the parties interested,⁹¹⁹ and the power is not affected by the fact that its exercise might work an injustice.⁹²⁰ The courts cannot interfere with the legislative discretion in amending a charter within the scope of the power reserved.⁹²¹

Where the right to amend is statutory, and not constitutional, it may be waived by a subsequent legislature, and the intent in each case must govern.⁹²² So an act amending a charter and providing that it shall not thereafter be altered without the concurrence of the corporation, operates as a waiver of the statutory reservation.⁹²³ But the mere nonuser of the power does not constitute a waiver.⁹²⁴ The power to alter or modify is not exhausted by one alteration.⁹²⁵

Where this power is reserved, a corporation authorized to maintain a dam across a river may be required to construct and maintain a fishway at the same point,⁹²⁶ or the trustees of a charitable educational institution may be required to lease a part of its unused lands to county school commissioners.⁹²⁷ A charter exemption from or commutation of taxation may be

50 Fed. 36; *Leep v. Railway Co.*, 58 Ark. 433, 41 Am. St. Rep. 127, 25 S. W. 83, 23 L. R. A. 264.

⁹¹⁸ *New Jersey v. Yard*, 95 U. S. 113, 24 L. ed. 352.

⁹¹⁹ *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 270, 13 S. Ct. 90, 36 L. ed. 963.

⁹²⁰ *Bienville Water etc. Co. v. Mobile*, 186 U. S. 223, 22 S. Ct. 820, 46 L. ed. 1132.

⁹²¹ *Spring Valley Waterworks v. Schottler*, 110 U. S. 355, 4 S. Ct. 48, 28 L. ed. 173; *Greenwood v. Freight Co.*, 105 U. S. 22, 26 L. ed. 961.

⁹²² *New Jersey v. Yard*, 95 U. S. 111, 24 L. ed. 352; *Hancock v. Singer Mfg. Co.*, 62 N. J. L. 328, 14 Atl. 847, 42 L. R. A. 852.

⁹²³ *Louisville Gas Co. v. Citizens' Gas Co.*, 115 U. S. 698, 6 S. Ct. 265, 29 L. ed. 510.

⁹²⁴ *Chicago etc. R. R. Co. v. Iowa*, 94 U. S. 162, 24 L. ed. 94.

⁹²⁵ *People v. Hills*, 46 Barb. 340; *Proprietors v. Haskell*, 7 Ma. 474; *State v. Commissioner*, 37 N. J. L. 228.

⁹²⁶ *Holyoke Water Power Co. v. Lyman*, 15 Wall. 500, 21 L. ed. 133, affirming 104 Mass. 448, 6 Am. Rep. 250.

⁹²⁷ *Webster v. Cambridge Seminary*, 78 Md. 204, 20 Atl. 26.

withdrawn,⁹²⁸ or the method of taxation may be changed.⁹²⁹ A different tax may be imposed than that stipulated in the charter,⁹³⁰ or a right to assess lands for improvements may be withdrawn.⁹³¹ A charter provision authorizing corporate directors to fix rates of charges is subject to change under a general reservation of the power to alter or amend.⁹³²

The reserved power extends to an amendment giving the minority stockholders representation on the board of directors, although formerly the majority could elect a full board.⁹³³ A statute fixing the individual liability of stockholders is valid, and applies to existing corporations.⁹³⁴ The stockholders may be made personally liable for all debts until the entire capital stock is paid in,⁹³⁵ or the legislature may provide that the directors of an insolvent corporation shall be primarily liable for the corporate debts whereas before they were only secondarily liable.⁹³⁶ Where the power is reserved, the legislature

⁹²⁸ *Tomlinson v. Jessup*, 15 Wall. 454, 24 L. ed. 204; *Railroad Co. v. Maine*, 96 U. S. 511, 29 L. ed. 836; *Louisville Water Co. v. Clark*, 143 U. S. 12, 12 S. Ct. 349, 36 L. ed. 55; *Citizens' Bank v. Owenboro*, 173 U. S. 645, 19 S. Ct. 533, 43 L. ed. 840; *Covington v. Kentucky*, 173 U. S. 239, 19 S. Ct. 386, 43 L. ed. 679; *Hewitt v. New York etc. R. R. Co.*, 12 Blatchf. 467, Fed. Cas. No. 6443; *City v. Metropolitan Bank*, 27 La. Ann. 648; *State v. Maine Central R. R. Co.*, 66 Mo. 505; *State v. Railroad Co.*, 44 Md. 165; *State v. Mayor*, 31 N. J. L. 575, 86 Am. Dec. 240; *State Board v. Patterson etc. R. R. Co.*, 53 N. J. L. 450, 14 Atl. 612; *Commonwealth v. Fayette Co. R. R. Co.*, 55 Pa. St. 452; *Iron City Bank v. Pittsburgh*, 37 Pa. St. 345.

⁹²⁹ *Dubuque v. Illinois Central R. R. Co.*, 39 Iowa, 94.

⁹³⁰ *Iron City Bank v. Pittsburgh*, 37 Pa. St. 340.

⁹³¹ *Marion etc. Co. v. Sleeth*, 53 Ind. 41.

⁹³² *Chicago etc. R. R. Co. v. Iowa*, 94 U. S. 162, 24 L. ed. 94; *St. Louis etc. Ry. Co. v. Gill*, 54 Ark. 101, 15 S. W. 18, 16 L. B. A. 787; *Spring Valley Waterworks v. Schottler*, 110 U. S. 347, 4 S. Ct. 48, 28 L. ed. 173; *Attorney General v. Railroad Cos.*, 35 Wis. 563; *Mobile etc. R. R. Co. v. Steiner*, 61 Ala. 592; *Spring Valley Waterworks v. Board of Supervisors*, 61 Cal. 5.

⁹³³ *Attorney General v. Looker*, 111 Mich. 501, 69 N. W. 930.

⁹³⁴ *Sherman v. Smith*, 1 Black, 587, 17 L. ed. 163; *In re Reciprocity Bank*, 20 Barb. 369; *In re Lee's Bank*, 21 N. Y. 14; *Bailey v. Hollister*, 26 N. Y. 112; *In re Empire City Bank*, 18 N. Y. 199.

⁹³⁵ *Butler v. Walker*, 8 Chic. L. N. 92.

⁹³⁶ *Falconer v. Campbell*, 2 McLean, 195, Fed. Cas. No. 4620.

may prohibit insolvent corporations from giving preferences,⁹³⁷ or may, as against subsequent creditors, permit assignments for the benefit of creditors.⁹³⁸ If the interests of the creditors demand it, the legislature may remove the corporate assets from the custody of the trustees and place them in the custody of a state officer,⁹³⁹ or may authorize a receiver to make assessments on premium notes instead of the directors;⁹⁴⁰ but it cannot appoint additional trustees.⁹⁴¹ The payment of dividends is also subject to legislative regulation under this power, and a corporation may be required to pay the excess of the dividend instead of one-third of the net profits.⁹⁴²

Under the reserved power to alter or amend, the legislature may make any alterations or amendments which do not defeat or substantially impair the object of grants or rights vested thereunder.⁹⁴³ Rights acquired which do not constitute part of the contract of incorporation, however, stand upon a different footing.⁹⁴⁴ Accordingly a contractual exemption from taxation upon consideration of certain payments cannot be changed under the reserved power, so as to continue the obligation in full and yet withdraw the exemption,⁹⁴⁵ and the imposition of a tax contrary to a charter exemption is not a legitimate exercise of the reserved power merely to dissolve a corporation.⁹⁴⁶ New duties and liabilities may, however, be imposed by the legislature in the exercise of its reserved power,⁹⁴⁷ and the

⁹³⁷ *Robinson v. Gardiner*, 18 Gratt. 509.

⁹³⁸ *Denny v. Bennett*, 128 U. S. 495, 9 S. Ct. 136, 32 L. ed. 491.

⁹³⁹ *Lathrop v. Stedman*, 42 Conn. 583.

⁹⁴⁰ *Hyatt v. McMahon*, 25 Barb. 457.

⁹⁴¹ *Sage v. Dillard*, 15 B. Mon. 340.

⁹⁴² *Massachusetts Gen. Hosp. v. State etc. Ins. Co.*, 70 Mass. 227.

⁹⁴³ *Holyoke etc. Co. v. Lyman*, 15 Wall. 522, 21 L. ed. 133; *Close v. Glenwood Cemetery*, 107 U. S. 476, 2 S. Ct. 267, 27 L. ed. 408; *New York etc. R. R. Co. v. Bristol*, 151 U. S. 567, 14 S. Ct. 437, 38 L. ed. 269.

⁹⁴⁴ *Maine Central R. R. Co. v. Maine*, 96 U. S. 510, 24 L. ed. 836.

⁹⁴⁵ *Stearns v. Minnesota*, 179 U. S. 240, 21 S. Ct. 73, 45 L. ed. 162; *Duluth etc. R. R. Co. v. St. Louis County*, 179 U. S. 324, 21 S. Ct. 124, 45 L. ed. 201.

⁹⁴⁶ *Asylum v. New Orleans*, 105 U. S. 369, 26 L. ed. 1128.

⁹⁴⁷ *Atchison etc. R. R. Co. v. Matthews*, 174 U. S. 104, 19 S. Ct. 609, 43 L. ed. 909.

corporate management may be changed.⁹⁴⁸ Burdens connected with the grant may be imposed by the legislature,⁹⁴⁹ and rights in franchises may be diminished.⁹⁵⁰

Instances of valid laws imposing new duties or liabilities are: laws requiring railroads to erect depots,⁹⁵¹ or requiring several railroads to unite in erecting a station in a city;⁹⁵² authorizing another company to lay a similar track, or to use the track of the first company upon making compensation for wear and tear;⁹⁵³ requiring railroad companies to raise or lower highways across their tracks;⁹⁵⁴ to fence their tracks,⁹⁵⁵ or to construct cattle-guards;⁹⁵⁶ directing excavations and embankments to be made,⁹⁵⁷ or requiring the widening of a bridge over an excavation.⁹⁵⁸

A statute permitting each stockholder to cumulate his votes upon any one or more candidates for directors is within the reserved power of the state.⁹⁵⁹ A corporation may also be required by subsequent statute to pay its employees weekly.⁹⁶⁰ The legislature may require a government aided railroad to maintain a sinking fund, although the original charter did not so require,⁹⁶¹ or may increase the number of directors to which a city is entitled in consideration for aid given.⁹⁶² A charter

⁹⁴⁸ *Close v. Glenwood Cemetery*, 107 U. S. 466, 2 S. Ct. 267, 27 L. ed. 408.

⁹⁴⁹ *English v. New Haven Co.*, 32 Conn. 240.

⁹⁵⁰ *Perrin v. Oliver*, 1 Minn. 202.

⁹⁵¹ *Commonwealth v. Eastern R. R. Co.*, 103 Mass. 254, 4 Am. Rep. 555.

⁹⁵² *Mayor v. N. & W. R. R. Co.*, 109 Mass. 103.

⁹⁵³ *Metropolitan R. R. Co. v. Highland Ry. Co.*, 118 Mass. 290.

⁹⁵⁴ *City of Roxbury v. Railroad Co.*, 6 Cush. 424.

⁹⁵⁵ *Staats v. Hudson River R. R. Co.*, 3 Keyes, 196.

⁹⁵⁶ *Bulkley v. New York etc. R. R. Co.*, 27 Conn. 479.

⁹⁵⁷ *Fitchburg R. R. Co. v. Grand Junction R. R. Co.*, 86 Mass. 198; *Albany R. R. Co. v. Brownell*, 24 N. Y. 345.

⁹⁵⁸ *English v. New Haven Co.*, 32 Conn. 240.

⁹⁵⁹ *Looker v. Maynard*, 179 U. S. 54, 21 S. Ct. 21, 45 L. ed. 79.

⁹⁶⁰ *State v. Brown etc. Co.*, 18 R. I. 24, 25 Atl. 249, 17 L. R. A. 856.

⁹⁶¹ *Sinking Fund Cases*, 99 U. S. 748, 25 L. ed. 504.

⁹⁶² *Miller v. State*, 15 Wall. 493, 21 L. ed. 98.

provision requiring the consent of a majority to levy a pew tax may also be modified under this power.⁹⁶³

— Power to Repeal.

The reservation of power to repeal or revoke corporate charters is valid.⁹⁶⁴ If the power to repeal depends on the abuse or misuse of corporate privileges, it is not necessary that such abuse or misuse should be judicially ascertained,⁹⁶⁵ and the forfeiture of a corporation's license to do business in a state, for violation of the act under which the license was given, violates no contract obligation.⁹⁶⁶ An act of incorporation may be repealed by implication where the power to repeal is reserved,⁹⁶⁷ and power to withdraw an entire franchise includes power to modify or restrict its exercise.⁹⁶⁸

While, under this reserved power to repeal, the state may terminate the existence of a corporation, it can take from the corporation by legislation no more than it has granted to the corporation by legislation.⁹⁶⁹ Property acquired by a corporation under its charter is not confiscated by reason of the repeal of the charter, nor are contract rights of third persons disturbed thereby;⁹⁷⁰ the courts retain power to protect the rights

⁹⁶³ *Bailey v. Trustees*, 6 R. I. 491.

⁹⁶⁴ *Bridge Co. v. United States*, 105 U. S. 481, 26 L. ed. 1143; *Laté Corporation etc. v. United States*, 136 U. S. 1, 10 S. Ct. 803, 34 L. ed. 478, affirming 5 Utah, 69, 15 Pac. 477; *Baltimore etc. Co. v. Mayor*, 64 Fed. 160; *Crease v. Babcock*, 23 Pick. 340, 34 Am. Dec. 63; *McLaren v. Pennington*, 1 Paige, 102; *People v. O'Brien*, 111 N. Y. 49, 7 Am. St. Rep. 702, 18 N. E. 702, 2 L. R. A. 255; *State v. Southern Pacific R. R. Co.*, 24 Tex. 125.

⁹⁶⁵ *Crease v. Babcock*, 23 Pick. 334, 34 Am. Dec. 63; *Miners' Bank v. United States*, 1 Iowa, 553; *Erie etc. R. R. Co. v. Casey*, 26 Pa. St. 287. But see *Mayor etc. v. Pittsburgh etc. R. R.*, 1 Abb. U. S. 9, Fed. Cas. No. 827; *Flint etc. v. Woodhull*, 25 Mich. 99.

⁹⁶⁶ *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 47, 20 S. Ct. 518, 44 L. ed. 657.

⁹⁶⁷ *Union R. R. Co. v. East Tennessee R. R. Co.*, 14 Ga. 327.

⁹⁶⁸ *West End etc. R. R. Co. v. Atlanta Street R. R. Co.*, 49 Ga. 151.

⁹⁶⁹ *Ashnelot R. R. Co. v. Elliott*, 58 N. H. 451; *Black River Imp. Co. v. Holway*, 87 Wis. 587, 59 N. W. 127.

⁹⁷⁰ *Greenwood v. Freight Co.*, 105 U. S. 19, 26 L. ed. 961.

of such third persons.⁹⁷¹ Franchises granted for a longer period than the life of the corporation exercising them survive the dissolution of the corporation,⁹⁷² and upon the same principle, where a corporation has acquired franchises from another source than the legislature, as from a municipality, such franchises are property, of which the corporation cannot be deprived without due process of law;⁹⁷³ they constitute a part of the corporate assets, to be distributed as other property.⁹⁷⁴

The executory contracts of a corporation cannot be destroyed under the power to repeal the charter, and rights thereunder may be asserted in the courts against the property.⁹⁷⁵ If the power to repeal is reserved by one constitution, it cannot be affected by the subsequent adoption of another.⁹⁷⁶ Under the reserved power to repeal the state may regulate tolls or rates of transportation of persons or property.⁹⁷⁷ A state may alter or repeal a charter of incorporation where it is the sole contributor to the fund which supports the corporation.⁹⁷⁸

⁹⁷¹ *Lake Shore etc. Ry. v. Smith*, 173 U. S. 690, 19 S. Ct. 567, 43 L. ed. 838; *Lafayette Co. v. Neely*, 21 Fed. 739; *Hill v. Glasgow Ry.*, 41 Fed. 616; *Citizens' Street Ry. Co. v. City Ry. Co.*, 64 Fed. 651.

⁹⁷² *Detroit v. Detroit City Ry. Co.*, 56 Fed. 883.

⁹⁷³ *Monongahela Nav. Co. v. United States*, 148 U. S. 344, 13 S. Ct. 633, 37 L. ed. 463.

⁹⁷⁴ *People v. O'Brien*, 111 N. Y. 57, 7 Am. St. Rep. 709, 18 N. E. 707, 2 L. R. A. 255.

⁹⁷⁵ *Curran v. Arkansas*, 15 How. 312, 14 L. ed. 705; *Edison Light Co. v. New Haven Co.*, 35 Fed. 237; *Smith v. Huckabee*, 53 Ala. 195; *Whitney v. Sheboygan Co.*, 25 Wis. 207, 3 Am. Rep. 47.

⁹⁷⁶ *State v. Northern Cent. R. R. Co.*, 44 Md. 131.

⁹⁷⁷ *Peik v. Northwestern R. R. Co.*, 94 U. S. 164, 24 L. ed. 97; *Parker v. Metropolitan etc. R. R. Co.*, 109 Mass. 506; *Plankroad Co. v. Reynolds*, 3 Wis. 287; *Attorney General v. Railroad Co.*, 35 Wis. 425; *Hinckley v. Chicago etc. R. R.*, 38 Wis. 194; *Shields v. State*, 26 Ohio St. 86.

⁹⁷⁸ *Curran v. Arkansas*, 15 How. 309, 14 L. ed. 705; *Dart v. Houston*, 22 Ga. 506; *Trustees v. Winston*, 5 Stew. & P. 17; *Bass v. Fontleroy*, 11 Tex. 698; *Mobile School Com. v. Putnam*, 44 Ala. 406.

Obligation of Contract, What is.

The obligation of a contract is the law which binds the parties to perform their agreement; the law in force at the time when the contract is made, and which enters into and becomes a part of the contract.¹ It is that duty to perform the contract which is recognized and enforced by law;² it depends upon the terms of the contract and the means which the law in existence at the time affords for its enforcement,³ and consists of that right or power over his will or actions which a party confers on another,⁴ and includes everything within its object and scope.⁵ The obligation contemplated by this clause is a valid and subsisting, and not a contingent or speculative, obligation.⁶ It does not inhere and consist in the contract itself, but in the law applicable to the contract.⁷ Laws relating to the validity, construction, discharge and enforcement of the contract constitute the obligation and are a part of the contract.⁸ The binding force of a contract depends upon the laws in existence when it is made.⁹ It is the legal and not the

¹ *Sturges v. Crowninshield*, 4 Wheat. 197, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 257, 259, 6 L. ed. 606; *Von Hoffman v. Quincy*, 4 Wall. 552, 18 L. ed. 403; *Bedford v. Eastern Building etc. Assn.*, 181 U. S. 241, 21 S. Ct. 597, 45 L. ed. 834; *Blann v. State*, 39 Ala. 353, 74 Am. Dec. 788; *Trustees v. Rider*, 13 Conn. 96; *Young v. Harrison*, 6 Ga. 156; *Wachter v. Famachon*, 62 Wis. 121, 22 N. W. 161.

² *Curran v. Arkansas*, 15 How. 319, 14 L. ed. 705; *Louisiana v. New Orleans*, 102 U. S. 206, 26 L. ed. 132; *Louisiana v. Police Jury*, 111 U. S. 720, 4 S. Ct. 648, 28 L. ed. 574.

³ *Murray v. Charleston*, 96 U. S. 448, 24 L. ed. 760.

⁴ *Ogden v. Saunders*, 12 Wheat. 213, 6 L. ed. 606; *Lapsley v. Brashears*, 4 Litt. 47.

⁵ *Edwards v. Kearzey*, 96 U. S. 601, 24 L. ed. 793.

⁶ *Curran v. Arkansas*, 15 How. 319, 14 L. ed. 705.

⁷ *Ogden v. Saunders*, 12 Wheat. 353, 6 L. ed. 606; *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. ed. 529; *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Blair v. Williams*, 4 Litt. 34; *Lapsley v. Brashears*, 4 Litt. 47; *Blanchard v. Russell*, 13 Mass. 1, 7 Am. Dec. 106.

⁸ *Edwards v. Kearzey*, 96 U. S. 601, 24 L. ed. 793; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Walker v. Whitehead*, 16 Wall. 317, 21 L. ed. 357.

⁹ *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. ed. 529; *Ogden v.*

moral, obligation of a contract which the constitution protects,¹⁰ and it is the obligation of contracts only that the constitution refers to.¹¹

The obligation of a contract commences at its date,¹² and continues until the debt is paid or the act is performed.¹³ The legal remedies for the enforcement of the contract which belong to it at the time and place where it is made continue to be a part of it until performance.¹⁴ The validity, construction, and remedy are parts of the obligation,¹⁵ and any subsequent law which so affects the remedy as to impair and lessen the value of the contract is forbidden.¹⁶ The protection of the obligation clause extends to future acquisitions under a contract valid when made.¹⁷ Statutes in force at the time of the issuance of bonds form a part of the contract of the parties.¹⁸ Contracts based for consideration upon Confederate money or securities, not issued in aid of Rebellion, have a legal, binding obligation protected by this clause.¹⁹ Parties are not pre-

Saunders, 12 Wheat. 213, 6 L. ed. 606; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Robinson v. Magee*, 9 Cal. 84, 70 Am. Dec. 638; *Aycock v. Martin*, 37 Ga. 124, 92 Am. Dec. 56; *Johnson v. Duncan*, 3 Mart. 531, 6 Am. Dec. 675; *Bruce v. Schuyler*, 4 Gilm. 221, 46 Am. Dec. 447; *West Sav. Fund v. Philadelphia*, 31 Pa. St. 175; *Wood v. Wood*, 14 Rich. 148; *Smith v. Cleveland*, 17 Wis. 556; *Fitzgerald v. Grand Trunk Ry. Co.*, 63 Vt. 169, 22 Atl. 76, 13 L. R. A. 70.

¹⁰ *Ogden v. Saunders*, 12 Wheat. 213, 6 L. ed. 606; *Webster v. Rose*, 6 Heisk. 93, 19 Am. Rep. 583.

¹¹ *Ogden v. Saunders*, 12 Wheat. 213, 6 L. ed. 606; *Robinson v. Magee*, 9 Cal. 84, 70 Am. Dec. 638; *Blair v. Williams*, 4 Litt. 34.

¹² *Blair v. Williams*, 4 Litt. 34.

¹³ *Bailey v. Gentry*, 1 Mo. 164; *Forsythe v. Marbury*, R. M. Charl. 324.

¹⁴ *Gunn v. Barry*, 15 Wall. 623, 21 L. ed. 212; *In re Ayers*, 123 U. S. 505, 8 S. Ct. 164, 31 L. ed. 216.

¹⁵ *Green v. Biddle*, 8 Wheat. 1, 5 L. ed. 547; *Ogden v. Saunders*, 12 Wheat. 213, 6 L. ed. 606; *Bronson v. Kinzie*, 1 How. 311; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357.

¹⁶ *Edwards v. Kearzey*, 96 U. S. 607, 24 L. ed. 793; *Seibert v. Lewis*, 122 U. S. 294, 7 S. Ct. 1190, 30 L. ed. 1161.

¹⁷ *Edwards v. Kearzey*, 96 U. S. 600, 24 L. ed. 793.

¹⁸ *Butz v. City of Muscatine*, 8 Wall. 583, 19 L. ed. 490.

¹⁹ *Thorington v. Smith*, 8 Wall. 1, 19 L. ed. 361; *Delmas v. Mer-*

sumed to have contracted with reference to every existing law, however, but only with reference to those laws which in their direct or necessary operation, control or affect their obligations.²⁰

— What Constitutes Impairment.

To impair the obligation of a contract means to alter it so as to make the contract more beneficial to one party and less to the other than by its terms it purports to be.²¹ A law releasing any part of the obligation of a contract impairs it to that extent, and is unconstitutional.²² So, also, as to a law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from stipulations in the contract,²³ or a law which imposes new conditions or dispenses with those expressed.²⁴ Any means which lessens the validity, gives diminished value, or divests priority of lien, obligation or recovery, violates the obligation,²⁵ or anything which affects the validity of the contract,²⁶ as where the remedy is diminished, weakened, or rendered less operative.²⁷ The obligation of a contract is impaired by acts preventing its enforcement, or materially abridging remedies, without supplying others equally

chants' Ins. Co., 14 Wall. 661, 20 L. ed. 757; *Hanauer v. Woodruff*, 15 Wall. 439, 21 L. ed. 224; *Confederate Note Case*, 19 Wall. 548, 22 L. ed. 196; *Wilmington etc. R. R. v. King*, 91 U. S. 3, 23 L. ed. 186; *Roach v. Gunter*, 44 Ala. 209, 4 Am. Rep. 132; *Branch v. Baker*, 53 Ga. 502; *Henderson v. Merchants' Mut. Ins. Co.*, 25 La. Ann. 343. But see *Hale v. Huston*, 44 Ala. 134, 4 Am. Rep. 124.

²⁰ *Connecticut Mut. Life Ins. Co. v. Cushman*, 108 U. S. 65, 2 S. Ct. 236, 27 L. ed. 648; *Rosenplanter v. Provident Sav. etc. Soc.*, 96 Fed. 727, 728, 46 L. R. A. 473, affirming 91 Fed. 735.

²¹ *Bailey v. Gentry*, 1 Mo. 164.

²² *Sturges v. Crowninshield*, 4 Wheat. 197, 4 L. ed. 529.

²³ *Green v. Biddle*, 8 Wheat. 84, 5 L. ed. 547; *Ogden v. Saunders*, 12 Wheat. 261, 6 L. ed. 606.

²⁴ *Railroad Co. v. Pennsylvania*, 15 Wall. 320, 21 L. ed. 179.

²⁵ *Grimball v. Ross*, Charl. 175.

²⁶ *Edwards v. Kearzey*, 96 U. S. 595, 24 L. ed. 793; *Planters' Bank v. Sharp*, 6 How. 301, 12 L. ed. 447.

²⁷ *Lapsley v. Brashears*, 4 Litt. 47; *Nevitt v. Bank*, 14 Miss. 513.

adequate,²⁸ or diminishing the duty or denying or obstructing the rights accruing from it,²⁹ or dispensing with any part of its force.³⁰ So the discharge of a contract is a direct impairment of its obligation;³¹ so where the contract is destroyed,³² or where an essential part is annulled,³³ or partly rescinded.³⁴

The time, place, parties or subject of a contract cannot be changed,³⁵ and the obligation is impaired by a statute which authorizes a discharge of the contract by a smaller sum, or at a different time, or in a different manner than stipulated,³⁶ as the alteration of the terms of a condition in a mortgage,³⁷ or a statute authorizing a defendant to give up the property, for which the contract on which he is sued, was made in full discharge of his indebtedness.³⁸ If, however, neither party is relieved from performing anything of that which he bound himself to do, the obligation of the contract is not impaired.³⁹

Acts declaring void, contracts which were valid when made, impair contract obligations and are void,⁴⁰ and statutes declaring that a certain, hitherto good, consideration shall be void, are inoperative as to prior contracts;⁴¹ e. g., a statute declaring

²⁸ *McGahey v. Virginia*, 135 U. S. 693, 10 S. Ct. 972, 34 L. ed. 304; *State v. Young*, 28 Minn. 525, 9 N. W. 739.

²⁹ *McCracken v. Hayward*, 2 How. 612, 11 L. ed. 397.

³⁰ *Planters' Bank v. Sharp*, 6 How. 327, 12 L. ed. 447.

³¹ *Farmers' etc. Bank v. Smith*, 6 Wheat. 131, 5 L. ed. 224.

³² *Robinson v. Magee*, 9 Cal. 84, 70 Am. Dec. 638.

³³ *New Jersey v. Wilson*, 7 Cr. 164, 3 L. ed. 303.

³⁴ *Grimball v. Ross*, Charl. 175.

³⁵ *Townsend v. Townsend*, Peck (Tenn.), 1, 14 Am. Dec. 722.

³⁶ *Golden v. Prince*, 3 Wash. C. C. 313, Fed. Cas. No. 5509; *Edmondson v. Ferguson*, 11 Mo. 344.

³⁷ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Pool v. Young*, 7 Mon. 58.

³⁸ *Abercrombie v. Baxter*, 44 Ga. 36.

³⁹ *Oshkosh Waterworks Co. v. Oshkosh*, 187 U. S. 437, 47 L. ed. 249, affirming 109 Wis. 208, 95 Am. St. Rep. 811, 85 N. W. 376.

⁴⁰ *Mays v. Williams*, 27 Ala. 267; *Berrett v. Oliver*, 7 Gill & J. 101; *Harrison v. Styres*, 74 N. C. 290.

⁴¹ *McNealy v. Gregory*, 13 Fla. 417.

that contracts the consideration of which was slaves, void,⁴² or a statute declaring the consideration of Confederate notes, bonds, or money to be void.⁴³ So, also, verbal contracts, valid when made, cannot be invalidated by a subsequent act requiring such contracts to be evidenced by writing,⁴⁴ nor can a statute requiring certain contracts to be stamped be applied to contracts previously executed.⁴⁵ A statute which releases one party from any article of a stipulation is a violation of the obligation;⁴⁶ e. g., a statute releasing a sheriff and sureties from liability on an official bond,⁴⁷ or releasing sureties on a bail bond after condition broken and an assignment of the bond to the creditor.⁴⁸ The sureties on an official bond cannot be held liable for the failure of their principal to discharge the duties of an additional office imposed by a subsequent act,⁴⁹ nor can a statute change the liability of sureties from joint to joint and several.⁵⁰ A statute releasing a tenant from his

⁴² *Osborn v. Nicholson*, 13 Wall. 654, 20 L. ed. 689; *Boyce v. Tabb*, 18 Wall. 546, 21 L. ed. 757; *McElvain v. Mudd*, 44 Ala. 48, 4 Am. Rep. 106; *Fitzpatrick v. Hearne*, 44 Ala. 171, 4 Am. Rep. 128; *Roach v. Gunter*, 44 Ala. 209, 4 Am. Rep. 132.

⁴³ *Delmas v. Merchants' Ins. Co.*, 14 Wall. 661, 20 L. ed. 757; *Hanauer v. Woodruff*, 15 Wall. 439, 21 L. ed. 224; *Confederate Note Case*, 19 Wall. 548, 22 L. ed. 196; *Wilmington etc. R. R. v. King*, 91 U. S. 3, 23 L. ed. 186; *Forscheimer v. Holly*, 14 Fla. 239; *Roach v. Gunter*, 44 Ala. 209, 4 Am. Rep. 132; *Hatch v. Burroughs*, 1 Woods, 439, Fed. Cas. No. 6203; *Henderson v. Merchants' Mut. Ins. Co.*, 25 La. Ann. 343.

⁴⁴ *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Hayes v. Clinkscapes*, 9 Rich. 441; *Richardson v. Cook*, 37 Vt. 599, 88 Am. Dec. 622.

⁴⁵ *Hunter v. Cobb*, 1 Bush (Ky.), 239.

⁴⁶ *Jones v. Crittenden*, 1 Car. Law Rep. 385, 6 Am. Dec. 531; *Pool v. Young*, 7 Mon. 587; *Townsend v. Townsend, Peck* (Tenn.), 1, 14 Am. Dec. 722; *Greenfield v. Dorris*, 1 Sneed, 548.

⁴⁷ *State v. Gatzweiller*, 49 Mo. 18, 8 Am. Rep. 119.

⁴⁸ *Lewis v. Brackenridge*, 1 Blackf. 220, 12 Am. Dec. 228; *Starr v. Robinson*, 1 Chip. 257, 6 Am. Dec. 732.

⁴⁹ *Reynolds v. Hall*, 2 Ill. 35.

⁵⁰ *Fielden v. Lahens*, 6 Blatchf. 524, Fed. Cas. No. 4773.

⁵¹ *Clark v. Ticknor*, 49 Mo. 144.

⁵² *Coles v. Celluloid Mfg. Co.*, 39 N. J. L. 326.

liability for rent is void,⁵¹ as also is a statute terminating a prior lease upon the destruction of the premises by fire.⁵²

— Degree of Impairment.

Under the constitution the obligation of a contract is not to be impaired at all.⁵³ It is not a question of degree, manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force;⁵⁴ and any deviation by postponement or acceleration of the period of performance, or imposing conditions not expressed, or dispensing with those expressed, is a violation of the obligation.⁵⁵ The slightest variation of the obligation impairs it to that extent and is unconstitutional.⁵⁶

Instances of such variation are: laws compelling a party to do more than his contract requires or enforcing payment before a debt becomes due under a contract;⁵⁷ providing for the

⁵³ *Green v. Biddle*, 8 Wheat. 84, 5 L. ed. 547; *Planters' Bank v. Sharp*, 6 How. 327, 12 L. ed. 447; *Von Hoffman v. Quincy*, 4 Wall. 553, 18 L. ed. 403; *Antoni v. Greenhow*, 107 U. S. 797, 2 S. Ct. 115, 33 L. ed. 301; *United States v. Jefferson County*, 1 McCrary, 361, 5 Dill. 315, Fed. Cas. No. 15,472; *Mutual Life Ins. Co. v. Richardson*, 77 Fed. 398; *Phinney v. Phinney*, 81 Me. 461, 10 Am. St. Rep. 269, 17 Atl. 407, 4 L. R. A. 348; *State v. Young*, 29 Minn. 547, 9 N. W. 751; *Lessley v. Phipps*, 49 Miss. 800; *Skinner v. Holt*, 9 S. Dak. 434, 62 Am. St. Rep. 883, 69 N. W. 597.

⁵⁴ *Sturges v. Crowninshield*, 4 Wheat. 197, 4 L. ed. 529; *Green v. Biddle*, 8 Wheat. 84, 5 L. ed. 545; *Planters' Bank v. Sharp*, 6 How. 327, 12 L. ed. 447; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357; *Von Hoffman v. Quincy*, 4 Wall. 553, 4 L. ed. 403; *Gault's Appeal*, 33 Pa. St. 194; *Farnsworth v. Reeves*, 2 Cold. 111; *Winter v. Jones*, 10 Ga. 190, 54 Am. Dec. 379; *Woodruff v. State*, 3 Ark. 285; *Commercial Bank v. State*, 4 Smedes & M. 439.

⁵⁵ *Green v. Biddle*, 8 Wheat. 84, 5 L. ed. 547; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Railroad Co. v. Pennsylvania*, 15 Wall. 320, 21 L. ed. 179; *McGahey v. Virginia*, 135 U. S. 693, 10 S. Ct. 972, 34 L. ed. 304; *New York etc. R. R. Co. v. Pennsylvania*, 153 U. S. 647, 14 S. Ct. 958, 38 L. ed. 846.

⁵⁶ *Sturges v. Crowninshield*, 4 Wheat. 197, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 21, 6 L. ed. 606; *Goodale v. Fennell*, 27 Ohio St. 432, 22 Am. Rep. 326; *People ex rel. v. Otis*, 90 N. Y. 52; *Blanchard v. Russell*, 13 Mass. 1, 7 Am. Dec. 106.

⁵⁷ *Jones v. Crittenden*, 1 Car. L. Rep. 385, 6 Am. Dec. 531; *Townsend v. Townsend, Peck* (Tenn.), 1, 14 Am. Dec. 721.

issue of substitute bonds tending to lessen a city's liability;⁵⁸ altering a law providing for the assessment of a tax so as to impair bonds issued in reliance upon it;⁵⁹ providing that the estate of one jointly liable with another shall not be discharged by his death;⁶⁰ authorizing the sale of property free from encumbrance before the maturity of a mortgage;⁶¹ providing that all contracts shall be payable in installments;⁶² changing a joint bond into a several bond;⁶³ depriving a creditor of interest on an overdue debt;⁶⁴ requiring the payment of interest on a debt which did not bear interest;⁶⁵ giving courts and juries power to remit interest;⁶⁶ requiring the payment of a higher rate of interest than that allowed when the contract was executed;⁶⁷ authorizing recovery of damages in addition to interest;⁶⁸ enlarging the liability of a surety by changing the contract of his principal;⁶⁹ changing the place of payment stipulated for the payment of a debt;⁷⁰ authorizing a party to surrender property in full discharge of indebtedness;⁷¹ withdrawing the property of a debtor from the operation of legal process of his creditor;⁷² authorizing a debtor, by assignment of his

⁵⁸ *Goodale v. Fennell*, 27 Ohio St. 432, 22 Am. Rep. 326.

⁵⁹ *Edwards v. Williamson*, 70 Ala. 152; *County Commissioners v. King*, 13 Fla. 476; *State v. Young*, 29 Minn. 528, 9 N. W. 741.

⁶⁰ *Randall v. Sackett*, 77 N. Y. 482.

⁶¹ *Randolph v. Middleton*, 26 N. J. Eq. 543.

⁶² *Aycock v. Martin*, 37 Ga. 124, 92 Am. Dec. 56; *Jacobs v. Smallwood*, 63 N. C. 112.

⁶³ *Fielden v. Lohens*, 6 Blatchf. 524, Fed. Cas. No. 4773.

⁶⁴ *Bleakley v. Williams*, 20 Pitts. L. J. 66.

⁶⁵ *Goggins v. Turnipseed*, 1 Rich., N. S., 80, 98 Am. Dec. 397, 7 Am. Rep. 23.

⁶⁶ *Roberts v. Cocke*, 28 Gratt. 215.

⁶⁷ *Woodruff v. State*, 3 Ark. 285; *Hubbard v. Callahan*, 42 Conn. 524, 19 Am. Rep. 564; *Lee v. Davis*, 1 A. K. Marsh. 397, 10 Am. Dec. 746; *Bryan v. Moore*, 1 Minor, 377.

⁶⁸ *Steen v. Finley*, 25 Miss. 535.

⁶⁹ *Schuster v. Weiss*, 114 Mo. 174, 21 S. W. 443, 19 L. R. A. 182.

⁷⁰ *Bank v. McVeigh*, 20 Gratt. 465.

⁷¹ *Abercrombie v. Baxter*, 44 Ga. 36.

⁷² *State v. Bank*, 1 S. C. 78.

property, to defeat a levy made thereon within ten days;⁷³ providing that indorsers shall be bound without demand, notice or protest.⁷⁴

Any act of the legislature in contravention of a compact is an impairment of the obligation of a contract and is void.⁷⁵ A declaratory act may be unconstitutional under this clause, as well as any other statute,⁷⁶ and a law providing that all future contracts shall be subject to the power of future legislatures cannot render the obligation clause inoperative as a protection.⁷⁷

— Laws not Violating Obligation.

A statute which affects the value of a contract does not necessarily impair its obligation; so long as the obligation to perform remains in force, legislation which retroacts on previous contracts and enhances the cost and difficulty of performance or diminishes the value of such performance is constitutional.⁷⁸ The states may pass laws which will operate to divest antecedent rights if they do not technically impair the obligation of contracts.⁷⁹ The legislature may validate past transac-

⁷³ *Peninsular etc. v. Union Oil Co.*, 100 Wis. 492, 76 N. W. 361, 42 L. R. A. 331; *Second etc. Bank v. Schranck*, 97 Wis. 262, 73 N. W. 35, 39 L. R. A. 569.

⁷⁴ *Farmers' Bank v. Grinnell*, 26 Gratt. 131.

⁷⁵ *Green v. Biddle*, 8 Wheat. 84, 5 L. ed. 547; *Pennsylvania v. Wheeling etc. Bridge Co.*, 18 How. 433, 15 L. ed. 449.

⁷⁶ *Dundas v. Bowler*, 3 McLean, 397, Fed. Cas. No. 4141; *Union Iron Co. v. Pierce*, 4 Biss. 327, Fed. Cas. No. 14,367.

⁷⁷ *Green v. Schroeder*, 8 Minn. 387.

⁷⁸ *Curtis v. Whitney*, 13 Wall. 71, 20 L. ed. 513; *Hamilton Gaslight Co. v. Hamilton City*, 146 U. S. 268, 13 S. Ct. 93, 36 L. ed. 963; *Griswold v. Bragg*, 18 Blatchf. 208, 48 Fed. 522, 48 Conn. 582.

⁷⁹ *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 648; *Watson v. Mercer*, 8 Pet. 110, 8 L. ed. 876; *Baltimore etc. R. R. v. Nesbit*, 10 How. 395, 13 L. ed. 469; *Carpenter v. Pennsylvania*, 17 How. 463, 15 L. ed. 127; *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed. 458, affirming 16 Serg. & R. 186; *Lewis v. Lewis*, 7 How. 784, 12 L. ed. 909; *Charles Riv. Bridge v. Warren Bridge*, 11 Pet. 420, 9 L. ed. 773; *Freeland v. Williams*, 131 U. S. 420, 9 S. Ct. 768, 33 L. ed. 193; *Albee v. May*, 2 Paine, 79, Fed. Cas. No. 134; *Buckner v. Street*, 1 Dill. 254, Fed. Cas. No. 2098; *Wilson v. Hardesty*, 1 Md. Ch. 68; *Coles v. Madison*

tions.⁸⁰ A law which gives validity to a void contract cannot be said to impair the obligation of such contract.⁸¹ Accordingly the legislature may cure irregularities in conveyances,⁸² or mortgages;⁸³ and laws passed to remedy defective execution of powers are not unconstitutional.⁸⁴ Statutes validating defective acknowledgments affect merely evidence of facts and do not impair contract obligations;⁸⁵ but such statutes cannot operate to divest the title of third persons not parties to deeds attempted to be corrected.⁸⁶ Acts curing defective registration of deeds stand upon the same footing and are valid.⁸⁷ Curative statutes in general are not open to objection as im-

County, Breese, 156, 12 Am. Dec. 163; *Danville v. Pace*, 25 Gratt. 10, 18 Am. Rep. 669; *Henderson R. R. Co. v. Dickerson*, 17 B. Mon. 177, 66 Am. Dec. 149; *Cochran v. Van Surlay*, 20 Wend. 365, 32 Am. Dec. 570.

⁸⁰ *Leland v. Wilkinson*, 10 Pet. 294, 9 L. ed. 430; *Pelt v. Payne*, 60 Ark. 637, 30 S. W. 426; *Dulany v. Tilghman*, 6 Gill & J. 473; *Wistar v. Foster*, 46 Minn. 484, 24 Am. St. Rep. 241, 49 N. W. 247.

⁸¹ *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed. 458, affirming 16 Serg. & R. 186; *Watson v. Mercer*, 8 Pet. 88, 8 L. ed. 876; *Hess v. Werts*, 4 Serg. & R. 356; *Bleakney v. Farmers' Bank*, 17 Serg. & R. 64, 17 Am. Dec. 635; *Bridgeport v. Railroad Co.*, 15 Conn. 475; *Welsch v. Wadsworth*, 30 Conn. 154; *Mather v. Chapman*, 6 Cow. 57; *Central Bank v. Empire S. D. Co.*, 26 Barb. 23.

⁸² *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed. 458, affirming 16 Serg. & R. 186; *Watson v. Mercer*, 8 Pet. 88, 8 L. ed. 876; *Leland v. Wilkinson*, 10 Pet. 294, 9 L. ed. 430; *McFadden v. Evans-Snyder-Buel Co.*, 185 U. S. 513, 22 S. Ct. 758, 46 L. ed. 1012; *Sidway v. Lawson*, 58 Ark. 117, 23 S. W. 648; *Grove v. Todd*, 41 Md. 633, 20 Am. Rep. 76; *Ross v. Worthington*, 11 Minn. 438, 88 Am. Dec. 95.

⁸³ *Gross v. United States Mortgage Co.*, 108 U. S. 477, 2 S. Ct. 940, 27 L. ed. 795, affirming 93 Ill. 483.

⁸⁴ *Sohn v. Watterson*, 17 Wall. 596, 21 L. ed. 737; *Randall v. Kreiger*, 23 Wall. 137, 23 L. ed. 124, affirming 2 Dill. 444, Fed. Cas. No. 11,554; *Dentzel v. Waldie*, 30 Cal. 138.

⁸⁵ *Carpenter v. Dexter*, 8 Wall. 525, 19 L. ed. 426; *Barnet v. Barnett*, 15 Serg. & R. 72, 16 Am. Dec. 516; *Montgomery v. Hobson*, 19 Tenn. 437; *Alabama Life Ins. Co. v. Baldwin*, 38 Ala. 510; *Cupp v. Welch*, 50 Ark. 294, 7 S. W. 139; *Summer v. Mitchell*, 29 Fla. 179, 30 Am. St. Rep. 106, 10 South. 562, 14 L. R. A. 815.

⁸⁶ *Green v. Drinker*, 7 Watts & S. 440.

⁸⁷ *Hughes v. Cannon*, 2 Humph. 589; *Green v. Goodall*, 1 Cold. 404.

pairing contract obligations.⁸⁸ Accordingly the legislature may pass an act curing defective bond issues;⁸⁹ curing defective organization of public or private corporations;⁹⁰ curing irregularities or want of authority in the levy of taxes;⁹¹ providing for the validation of prior marriages.⁹² But the power to pass curative acts to legalize proceedings depends upon the existence of power to authorize such proceedings originally.⁹³

If a party is not precluded by a statute from enforcing a right or asserting a title, the statute cannot be said to impair a contract obligation.⁹⁴ So a statute declaring valid contracts based upon what was deemed an illegal consideration at the time they were made, is constitutional.⁹⁵ A law altering the statute of frauds and giving validity to a parol contract has been declared constitutional.⁹⁶ The use of the word "void" in a usury statute has been declared to have the force of voidable, and the repeal of such a statute to merely deprive a debtor of his statutory defense.⁹⁷ So the repeal of a usury statute validates contracts otherwise unenforceable.⁹⁸ And a statute mak-

⁸⁸ *Satterlee v. Matthewson*, 2 Pet. 412, 7 L. ed. 458; *McMasters v. Commonwealth*, 3 Watts, 244; *Gibson v. Hibbard*, 13 Mich. 219.

⁸⁹ *Gelpcke v. Dubuque*, 1 Wall. 204, 17 L. ed. 520; *Beloit v. Morgan*, 7 Wall. 624, 19 L. ed. 205; *Bridgeport v. Railroad Co.*, 15 Conn. 497; *Bass v. Columbus*, 30 Ga. 851; *McMillan v. Lee County*, 6 Iowa, 394; *Kunkle v. Franklin*, 13 Minn. 137, 97 Am. Dec. 226.

⁹⁰ *State v. Squires*, 26 Iowa, 348; *Shields v. Land Co.*, 94 Tenn. 148, 45 Am. St. Rep. 716, 28 S. W. 674, 26 L. R. A. 509.

⁹¹ *Grimm v. Weissenberg School Dist.*, 57 Pa. St. 433, 98 Am. Dec. 237.

⁹² *Jacquins v. Commonwealth*, 63 Mass. 282; *Goshen v. Richmond*, 86 Mass. 461.

⁹³ *Thompson v. Lee County*, 3 Wall. 331, 18 L. ed. 177; *Kimball v. Rosendale*, 42 Wis. 407, 24 Am. Rep. 421.

⁹⁴ *Drehman v. Stifle*, 8 Wall. 595, 19 L. ed. 508.

⁹⁵ *Satterlee v. Matthewson*, 2 Pet. 412, 7 L. ed. 458; *Curran v. Arkansas*, 15 How. 304; *Aspinwall v. Commissioners*, 22 How. 365, 18 L. ed. 296.

⁹⁶ *Baker v. Herndon*, 17 Ga. 568.

⁹⁷ *Ewell v. Daggs*, 108 U. S. 149, 2 S. Ct. 414, 27 L. ed. 682.

⁹⁸ *Ewell v. Daggs*, 108 U. S. 151, 2 S. Ct. 414, 27 L. ed. 682; *Woodruff v. Scruggs*, 27 Ark. 26, 11 Am. Rep. 777; *Baughner v. Nelson*, 9 Gill, 305, 52 Am. Dec. 698; *Andrews v. Russell*, 7 Blackf. 475; *Grimes*

ing previous payments of usurious interest valid is likewise unobjectionable.⁹⁹ A statute reducing the rate of interest payable by redemptioners of property sold under mortgages does not impair the obligation of mortgages previously executed.¹⁰⁰ Laws validating defective judgments do not impair contract obligations.¹⁰¹

Laws requiring the registration of certain instruments are not invalid as to existing contracts if a reasonable time is left in which to comply with them.¹⁰²

The legislature may repeal a statute under which certain contracts were illegal, and authorize suits thereon;¹⁰³ e. g., a statute repealing a statute prohibiting stock-jobbing and making contracts in relation thereto void.¹⁰⁴ Days of grace are no part of the original contract expressed in a negotiable instrument, and a state may change the rule as to the allowance of grace.¹⁰⁵ An act requiring an oath of loyalty from an attorney

v. Doe, 8 Blackf. 371; *Savings Bank v. Bates*, 8 Conn. 505; *Savings Bank v. Allen*, 28 Conn. 97; *Welch v. Wadsworth*, 30 Conn. 155, 79 Am. Dec. 239; *Nichols v. Gee*, 30 Ark. 145; *Wilson v. Hardesty*, 1 Md. Ch. 68; *Danville v. Pace*, 25 Gratt. 10, 18 Am. Rep. 669; *Curtis v. Leavitt*, 15 N. Y. 9. But see *Morton v. Rutherford*, 18 Wis. 298.

⁹⁹ *Sparks v. Clapper*, 30 Ind. 204.

¹⁰⁰ *Connecticut Mut. Life Ins. Co. v. Cushman*, 108 U. S. 51, 2 S. Ct. 236, 27 L. ed. 648; *Robertson v. Van Cleave*, 129 Ind. 217, 29 N. E. 899, 15 L. R. A. 68. But see *Hillibert v. Porter*, 28 Minn. 490, 11 N. W. 84.

¹⁰¹ *Tilton v. Swift*, 40 Iowa, 78; *Underwood v. Jilly*, 10 Serg. & R. 97.

¹⁰² *Jackson v. Lamphire*, 3 Pet. 280, 7 L. ed. 679; *Vance v. Vance*, 108 U. S. 514, 2 S. Ct. 854, 27 L. ed. 808; *Stafford v. Lick*, 7 Cal. 479; *Bird v. Keller*, 77 Me. 270; *Tarpley v. Hamer*, 9 Smedes & M. 310; *Weil v. State*, 46 Ohio St. 450, 21 N. E. 643; *Miles v. King*, 5 Rich. 146.

¹⁰³ *Milne v. Huber*, 3 McLean, 212, Fed. Cas. No. 9617; *Hill v. Smith*, Morr. 70; *Johnson v. Bentley*, 16 Ohio, 97; *Lewis v. McElvain*, 16 Ohio, 347. See, also, *Barings v. Dabney*, 19 Wall. 1, 22 L. ed. 90; *Van Horne v. Dorrance*, 2 Dall. 304, Fed. Cas. No. 16,857; *Walker v. Tipton*, 3 Dana, 3.

¹⁰⁴ *Washburn v. Franklin*, 35 Barb. 599.

¹⁰⁵ *Barlow v. Gregory*, 31 Conn. 268.

is not an impairment of the obligation of a contract.^{105a} Betterment laws, allowing ejected occupants of land to recover for improvements, are also valid.¹⁰⁶

The legislature may enact such laws as have for their object the application to public use of the property of any member of the community,¹⁰⁷ provided a fair and just equivalent is awarded to the owner.¹⁰⁸ A law may be good in part and bad in part; it may be bad as to past, and good as to future, transactions.¹⁰⁹ A law passed before a contract is made cannot be said to impair the obligation of that contract,¹¹⁰ and the legislature may pass a declaratory statute, which, although inoperative as to past transactions, may be effective as to future contracts.¹¹¹ So a law may prohibit the making of contracts of certain kinds.¹¹² The repeal of a statute is no more void than a new law would be which would operate on the contract to

^{105a} *State v. Garesche*, 36 Mo. 256.

¹⁰⁶ *Albee v. May*, 2 Paine, 74, Fed. Cas. No. 134; *Griswold v. Bragg*, 48 Fed. 519; *Bacon v. Callender*, 6 Mass. 303; *Lumb v. Pinckney*, 21 S. C. 471; *Brown v. Storm*, 4 Vt. 37; *Pacquette v. Pickness*, 19 Wis. 219.

¹⁰⁷ *Young v. McKenzie*, 3 Ga. 31; *Jackson v. Linn*, 4 Litt. 323; *Beekman v. Railroad Co.*, 3 Paige, 45, 22 Am. Dec. 679; *Bloodgood v. Railroad Co.*, 18 Wend. 9, 31 Am. Dec. 313.

¹⁰⁸ *People v. Platt*, 17 Johns. 195, 8 Am. Dec. 362; *Bonaparte v. Camden etc. Co.*, 1 Bald. 220, Fed. Cas. No. 1617.

¹⁰⁹ *Ogden v. Saunders*, 12 Wheat. 213, 6 L. ed. 606; *Berry v. Haines*, 2 Car. Law Rep. 428; *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 326; *Norris v. Boston*, 45 Mass. 282; *State v. Paul*, 5 R. I. 185; *Berry v. Iseman*, 14 Rich. 129, 91 Am. Dec. 262; *State v. Newton*, 59 Ind. 173.

¹¹⁰ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Railroad Co. v. McClure*, 10 Wall. 515, 19 L. ed. 997; *Edwards v. Kearzey*, 96 U. S. 600, 24 L. ed. 793; *Provident Inst. etc. v. Mayor*, 113 U. S. 515, 5 S. Ct. 612, 28 L. ed. 1102; *Lehigh Water Co. v. Easton*, 121 U. S. 391, 7 S. Ct. 916, 30 L. ed. 1059; *Pinney v. Nelson*, 183 U. S. 147, 22 S. Ct. 52, 46 L. ed. 125; *Moore v. Fowler*, Hemp. 536, Fed. Cas. No. 9761; *Blair v. Williams*, 4 Litt. 34; *Roby v. Boswell*, 23 Ga. 51; *Powers v. Dougherty*, 23 Ga. 65; *Sparrow v. Railroad Co.*, 7 Ind. 369; *Davis v. Bronson*, 6 Iowa, 410; *Burns v. Crawford*, 34 Mo. 330.

¹¹¹ *Postmaster General v. Early*, 12 Wheat. 148, 6 L. ed. 577.

¹¹² *Churchman v. Martin*, 54 Ind. 380.

affect its validity, construction or duration, but it cannot affect past contracts.¹¹³ So the repeal of a law regulating the manner in which notice of protest of negotiable paper shall be given does not impair the obligation of any contract,¹¹⁴ and the repeal of a statute making certain contracts unassignable is not unconstitutional as to prior contracts, since the obligations of such contracts are in nowise changed nor their terms affected.¹¹⁵

Relation of Obligation and Remedy.

Remedies for the enforcement of a contract existing at the time of its execution enter into, and form a material part of, the obligation of the contract, which the state may not so change as to impair a substantial right.¹¹⁶ A statute can no more impair the efficacy of a contract by changing the remedy given for its enforcement than by attacking its vitality in any other way.¹¹⁷ If the obligation is impaired it is immaterial how such a result is accomplished, whether by acting on the remedy or directly on the contract itself.¹¹⁸ A party has a right at all times to some adequate and available remedy,¹¹⁹ and so an act denying all remedy is unconstitutional.¹²⁰ So where the legal obligation

¹¹³ *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23; *Atwater v. Woolbridge*, 6 Conn. 223; *Osborne v. Humphreys*, 7 Conn. 335; *Landon v. Litchfield*, 11 Conn. 251.

¹¹⁴ *Levering v. Washington*, 3 Minn. 323; but see *Farmers' Bank of Virginia v. Grinnell*, 26 Gratt. 131.

¹¹⁵ *Harlan v. Sigler*, 1 Morr. 39; *Ford v. Hale*, 1 T. B. Mon. 23.

¹¹⁶ *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357; *Gunn v. Barry*, 15 Wall. 610, 21 L. ed. 212; *Peninsular Iron Works v. Union etc. Co.*, 100 Wis. 483, 69 Am. St. Rep. 934, 76 N. W. 359, 42 L. R. A. 331; *Johnson v. Higgins*, 3 Met. (Ky.) 566; *Beverly v. Barnitz*, 55 Kan. 466, 49 Am. St. Rep. 257, 42 Pac. 725, 31 L. R. A. 74; *Cochran v. D'Arcy*, 5 Rich. 125; *Spangler v. Green*, 21 Colo. 505, 52 Am. St. Rep. 259, 42 Pac. 674.

¹¹⁷ *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357.

¹¹⁸ *Skinner v. Holt*, 9 S. Dak. 427, 62 Am. St. Rep. 878, 69 N. W. 595; *Beverly v. Barnitz*, 55 Kan. 466, 49 Am. St. Rep. 257, 42 Pac. 725, 31 L. R. A. 74; *Spangler v. Green*, 21 Colo. 505, 52 Am. St. Rep. 259, 42 Pac. 674.

¹¹⁹ *Coffman v. Bank*, 40 Miss. 29, 90 Am. Dec. 311.

¹²⁰ *West v. Sansom*, 44 Ga. 295.

is diminished, suspended or destroyed by relaxing or abolishing the legal remedy, the obligation of the contract is impaired.¹²¹

The validity and remedy of a contract are inseparable;¹²² without the remedy, the contract in the sense of law ceases to exist, and one of the tests as to whether a contract has been impaired is whether its value has been diminished;¹²³ and if the law is so changed that the means of enforcing it are materially impaired, the obligation of the contract no longer remains the same.¹²⁴ This result may be accomplished by taking away a remedy entirely,¹²⁵ or by burdening the proceedings by new conditions or restrictions.¹²⁶

¹²¹ *McCracken v. Hayward*, 2 How. 612, 11 L. ed. 397; *Lapsley v. Brashears*, 4 Litt. 27.

¹²² *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Scaine v. Belleville*, 39 N. J. 10.

¹²³ *Von Hoffman v. Quincy*, 4 Wall. 552, 18 L. ed. 403; *Ochiltree v. Railroad Co.*, 21 Wall. 252, 22 L. ed. 546; *Kring v. Missouri*, 107 U. S. 233, 2 S. Ct. 443, 27 L. ed. 506; *Robert v. Coco*, 25 La. Ann. 199; *Lessley v. Phipps*, 49 Mo. 790; *Commissioners' Court v. Rather*, 48 Ala. 433; *Adams v. Green*, 100 Ala. 218, 14 South. 54; *Riggs v. Martin*, 5 Ark. 506, 41 Am. Dec. 103; *Davis v. Pierse*, 7 Minn. 13, 82 Am. Dec. 65.

¹²⁴ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 612, 11 L. ed. 397; *Gantly v. Ewing*, 3 How. 717, 11 L. ed. 794; *Curran v. Arkansas*, 15 How. 304, 14 L. ed. 705; *Butz v. Muscatine*, 8 Wall. 583, 19 L. ed. 490; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357; *Olcott v. Supervisors*, 16 Wall. 678, 21 L. ed. 382; *Gunn v. Barry*, 15 Wall. 623, 21 L. ed. 212; *Jackson v. Lamp-hire*, 3 Pet. 280, 7 L. ed. 679; *Edwards v. Kearzey*, 96 U. S. 601, 24 L. ed. 793; *Memphis v. United States*, 97 U. S. 295, 24 L. ed. 920; *Taylor v. Stearns*, 18 Gratt. 244; *Nevitt v. Bank*, 14 Miss. 513; *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283; *Woodruff v. Scruggs*, 27 Ark. 26, 11 Am. Rep. 777; *Smith v. Morse*, 2 Cal. 524; *Watkins v. Glenn*, 55 Kan. 417, 40 Pac. 316; *Webster v. Rose*, 6 Heisk. 93, 19 Am. Rep. 583.

¹²⁵ *Woodruff v. Trapnall*, 10 How. 190, 13 L. ed. 383; *Richmond R. R. Co. v. Louisiana R. R. Co.*, 13 How. 71, 14 L. ed. 55; *Bingham-ton Bridge Case*, 3 Wall. 51, 18 L. ed. 137; *East Hartford v. Hartford Bridge Co.*, 10 How. 535, 13 L. ed. 518; *Boston etc. R. R. Co. v. Salem etc. R. R. Co.*, 2 Gray, 1; *Piscataqua Bridge v. New Haven Bridge Co.*, 7 N. H. 35; *Brewster v. Hough*, 10 N. H. 138; *Johnson v. Dun-can*, 3 Mart. 531, 6 Am. Dec. 75.

¹²⁶ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *McCracken v.*

— Power of Legislature Over Remedy.

While the obligation of a contract may be impaired as effectually by striking at the remedy, and the states are prohibited from impairing that obligation under the guise of regulating the remedy, yet a violation of the obligation is not necessarily implied from a reasonable change in the mode of enforcing the contract.¹²⁷ Unless it substantially lessens the rights of the parties,¹²⁸ the change must necessarily embody the intent of the parties.¹²⁹

As has been said, the remedy for the enforcement of a contract forms a material part of its obligation, and the existence of a remedy is essential to the value of a contract, but the remedy constitutes no part of the contract itself, and may be changed or modified at the will of the legislature,¹³⁰ and this power of the legislature to regulate the remedy and modes of proceeding for the enforcement of a contract is subject only to the restriction that it cannot be so exercised as to take away

Hayward, 2 How. 612, 11 L. ed. 397; *Curran v. Arkansas*, 15 How. 304, 14 L. ed. 705; *Biggs v. Martin*, 5 Ark. 506, 41 Am. Dec. 103; *Mundy v. Monroe*, 1 Mich. 68; *Commercial Bank etc. v. Chambers*, 8 Smedes & M. (Miss.) 9; *Penrose v. Reed*, 2 Grant, 472; *West Savings Fund v. Philadelphia*, 31 Pa. St. 175; *Putnam v. Bond*, 15 Wis. 20.

¹²⁷ *Mason v. Haile*, 12 Wheat. 370, 6 L. ed. 660; *Templeton v. Horne*, 82 Ill. 491; *Rader v. S. E. Road Dist.*, 37 N. J. 273; *Baldwin v. Newark*, 38 N. J. 160; *Billings v. Riggs*, 56 Ill. 483.

¹²⁸ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. ed. 529; *Woodruff v. Trapnall*, 10 How. 190, 13 L. ed. 383; *Hawthorne v. Calef*, 2 Wall. 10, 17 L. ed. 776; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357.

¹²⁹ *Commercial Bank v. State*, 12 Miss. 439.

¹³⁰ *Sturges v. Crowninshield*, 4 Wheat. 200, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 262, 284, 349, 6 L. ed. 606; *Bronson v. Kinzie*, 1 How. 315, 11 L. ed. 143; *Gunn v. Barry*, 15 Wall. 623, 21 L. ed. 212; *Walker v. Whitehead*, 16 Wall. 318, 21 L. ed. 357; *Hill v. Merchants' Ins. Co.*, 134 U. S. 527, 10 S. Ct. 589, 33 L. ed. 994; *Woodhull v. Wagner*, 1 Baldw. 298, 301, Fed. Cas. No. 17,975; *Towne v. Smith*, 1 Wood & M. 130, 131, Fed. Cas. No. 14,115; *McCormick v. Rusch*, 15 Iowa, 136, 83 Am. Dec. 408; *In re Penniman*, 11 R. I. 338, 341; *Lowden v. Moses*, 3 McCord, 102; *Woodfin v. Hopper*, 4 Humph. 21; *Baldwin v. Newark*, 38 N. J. L. 158; *Neass v. Mercer*, 15 Barb. 318; *People v. Carpenter*, 46 Barb. 619.

all remedy upon the contract or impose burdens or restrictions which will materially impair its value.¹³¹ Thus the legislature may alter, modify, or even take away a remedy,¹³² provided a substantial remedy is left,¹³³ or provided a new, adequate and efficacious remedy is substituted.¹³⁴

A statute may give a remedy not already existing,¹³⁵ and this notwithstanding the new remedy may be less convenient, or more tardy or difficult.¹³⁶ Where, however, the application of the new remedy is so expensive and difficult as to render it valueless and inoperative the prohibition applies and the statute is void.¹³⁷ If a remedy given be as good as that taken

¹³¹ *Tennessee v. Sneed*, 96 U. S. 74, 24 L. ed. 610; *Terry v. Anderson*, 95 U. S. 637, 24 L. ed. 365; *South Carolina v. Gaillard*, 101 U. S. 438, 25 L. ed. 937; *Briscoe v. Anketell*, 28 Miss. 361, 61 Am. Dec. 553; *Van Rensselaer v. Read*, 26 N. Y. 558; *Ward v. Hubbard*, 62 Tex. 559.

¹³² *Sturges v. Crowninshield*, 4 Wheat. 200, 4 L. ed. 529; *Ogden v. Saunders*, 12 Wheat. 349, 6 L. ed. 606; *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Crawford v. Branch Bank of Mobile*, 7 How. 279, 12 L. ed. 700; *Kenyon v. Stewart*, 44 Pa. St. 179; *Stocking v. Hunt*, 3 Denio, 274; *Corner v. Miller*, 1 Bank. Reg. 99; *In re Jordan*, 8 Bank. Reg. 186, Fed. Cas. No. 7514; *Bruce v. Schuyler*, 4 Gilm. 221, 46 Am. Dec. 447; *Wood v. Child*, 20 Ill. 209; *Read v. Frankfort Bank*, 23 Mo. 318; *Penrose v. Erie Canal Co.*, 56 Pa. St. 46, 93 Am. Dec. 778; *Lord v. Chadbourne*, 42 Me. 429, 66 Am. Dec. 290; *Mason v. Waite*, 5 Ill. 134; *Evans v. Montgomery*, 4 Watts & S. 218; *Conkey v. Hart*, 14 N. Y. 22.

¹³³ *Outts v. Hardee*, 38 Ga. 350; *Lockhart v. Usry*, 28 Ga. 345; *State v. Judge*, 12 La. 352; *State v. Assessors*, 43 N. J. L. 338.

¹³⁴ *Louisiana v. Pillsbury*, 105 U. S. 301, 26 L. ed. 1090; *Poin-dexter v. Greenhow*, 114 U. S. 303, 5 S. Ct. 962, 29 L. ed. 185; *City etc. R. R. Co. v. New Orleans*, 157 U. S. 224, 15 S. Ct. 581, 39 L. ed. 679.

¹³⁵ *Freeborn v. Smith*, 2 Wall. 175, 17 L. ed. 922; *Foster v. Essex Bank*, 16 Mass. 245; *Rich v. Flanders*, 39 N. H. 325; *Schenley v. Commonwealth*, 36 Pa. St. 29, 78 Am. Dec. 359; *Hepburn v. Curts*, 7 Watts, 300, 32 Am. Dec. 760; *Wheat v. State, Minor*, 199; *Blann v. State*, 39 Ala. 353, 84 Am. Dec. 788.

¹³⁶ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Guild v. Rogers*, 8 Barb. 502; *Kirkman v. Bird*, 22 Utah, 100, 61 Pac. 338, 83 Am. Rep. 774, 58 L. R. A. 669.

¹³⁷ *Riggs v. Martin*, 5 Ark. 506, 41 Am. Dec. 103.

away no contract obligation is impaired.¹³⁸ If, when a contract was made, there was no legal remedy for its enforcement, the legislature may, without impairing its obligation, repeal a statute subsequently passed providing a remedy.¹³⁹ A mere change in one of two remedies does not impair any contract obligation,¹⁴⁰ and this is true in case of a law abolishing absolutely one of two remedies.¹⁴¹ So where the law has conferred an extraordinary remedy on a certain class of creditors a statute abolishing that remedy and leaving the ordinary remedy for the collection of debts, is constitutional.¹⁴² Although a particular remedy is agreed upon in a contract, a law substituting another equally efficacious remedy is unobjectionable;¹⁴³ but this is not true where the remedy provided at the inception of a contract is absolutely essential to the contract, and the legislature cannot abrogate it.¹⁴⁴ So long as contracts are submitted to the ordinary and regular course of justice, and existing remedies are substantially preserved, the obligation of the contracts is not impaired,¹⁴⁵ and a mere alteration in the remedy gives no ground for objection.¹⁴⁶ So the remedy for the enforcement of a right may be changed from equity to law,

¹³⁸ *Mason v. Haile*, 12 Wheat. 370, 6 L. ed. 660; *Louisiana v. New Orleans*, 102 U. S. 203, 26 L. ed. 132; *New Orleans v. Morris*, 3 Wood., 115, Fed. Cas. No. 10,183; *Milne v. Huber*, 3 McLean, 212, Fed. Cas. No. 9617; *Brandon v. Gaines*, 7 Humph. 130; *Simmons v. Hanover*, 40 Mass. 188; *Commercial Bank v. State*, 12 Miss. 439; *Wheat v. State, Minor*, 199; *Davis v. Ballard*, 1 J. J. Marsh. 563; *McMillan v. Sprague*, 4 How. (Miss.) 647, 35 Am. Dec. 412; *Lapsley v. Brashears*, 4 Litt. 47; *Townsend v. Townsend*, Peck (Tenn.), 1, 14 Am. Dec. 722.

¹³⁹ *Young v. Oregon*, 1 Or. 213.

¹⁴⁰ *Heyward v. Judd*, 4 Minn. 483.

¹⁴¹ *Watts v. Everett*, 47 Iowa, 269; *State v. Gaillard*, 9 Rep. 725.

¹⁴² *Stocking v. Hunt*, 3 Denio, 274.

¹⁴³ *Conkey v. Hart*, 14 N. Y. 22.

¹⁴⁴ *Thompson v. Commonwealth*, 81 Pa. St. 314.

¹⁴⁵ *Holmes v. Lansing*, 3 Johns. Cas. 73.

¹⁴⁶ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *Woodruff v. Trapnall*, 10 How. 190, 13 L. ed. 383; *Hawthorne v. Calef*, 2 Wall. 10, 17 L. ed. 776; *Morse v. Goold*, 11 N. Y. 281; *Jones v. Davis*, 6 Nev. 33; *Richardson v. Akin*, 87 Ill. 141; *Templeton v. Horne*, 82 Ill. 491; *Cox v. Berry*, 13 Ga. 306.

or vice versa,¹⁴⁷ and mere incidental delay following from a general law does not impair the remedy.¹⁴⁸

The states may pass remedial laws which are retrospective,¹⁴⁹ but not such as impair vested rights, or create personal liabilities, or impose new obligations or duties.¹⁵⁰ The sole fact that such a law purports to be retrospective in its operation is no objection to it.¹⁵¹ The giving of an additional remedy for the enforcement of a contract or debt is not objectionable under the obligation clause,¹⁵² especially where the new remedy simply tends to make enforcement more speedy and certain.¹⁵³ So a state may give an additional and more summary remedy for breach of contract, if it does not thereby enlarge the obligation; e. g., by mandamus.¹⁵⁴ A statute authorizing an attachment on a claim not yet due does not contravene this clause,¹⁵⁵ nor does a statute providing a more efficacious and speedy remedy for the collection of a claim for labor per-

¹⁴⁷ *Paschal v. Whitsell*, 11 Ala. 472; *Bethune v. Dougherty*, 30 Ga. 770; *Baughner v. Nelson*, 9 Gill, 299; *Bartlett v. Lang*, 2 Ala. 401.

¹⁴⁸ *Rathbone v. Bradford*, 1 Ala. 312; *Jones v. Crittenden*, 1 Car. Law Rep. 385, 6 Am. Dec. 531; *Townsend v. Townsend*, Peck (Tenn.), 1, 14 Am. Dec. 722; *Wood v. Wood*, 14 Rich. 148.

¹⁴⁹ *Freeborn v. Smith*, 2 Wall. 175, 17 L. ed. 922; *Foster v. Essex Bank*, 16 Mass. 245; *Rich v. Flanders*, 39 N. H. 304; *Searcy v. Stubbs*, 12 Ga. 437; *Johnson v. Roockogy*, 23 Ga. 183.

¹⁵⁰ *Brandon v. Gaines*, 7 Humph. 130; *Rich v. Flanders*, 39 N. H. 304; *De Cordova v. Galveston*, 4 Tex. 470; *Hope v. Johnson*, 2 Yerg. 125; *Van Zandt v. Waddell*, 2 Yerg. 260; *Coffin v. Rich*, 45 Me. 507, 71 Am. Dec. 559; *Kennebec Purch. v. Laboree*, 2 Me. 275.

¹⁵¹ *United States v. Samperyac*, 1 Hemp. 118.

¹⁵² *Hope v. Johnson*, 2 Yerg. 125.

¹⁵³ *Richardson v. Akin*, 87 Ill. 138; *Chapin v. Billings*, 91 Ill. 539; *State v. New Orleans City etc. Ry. Co.*, 42 La. Ann. 550, 7 South. 606; *Litchfield v. Verncon*, 41 N. Y. 123; *Brown v. Brittain*, 84 N. C. 552; *Winn v. Bowles*, 6 Munf. 23; *Paine v. Woodworth*, 15 Wis. 298.

¹⁵⁴ *New Orleans etc. R. R. Co. v. Louisiana*, 157 U. S. 224, 15 S. Ct. 581, 39 L. ed. 679; *Union Street Ry. Co. v. Snow*, 168 U. S. 707, 18 S. Ct. 948, 42 L. ed. 1214; *Red River Valley Bank v. Craig*, 191 U. S. 558, 21 S. Ct. 703, 45 L. ed. 994.

¹⁵⁵ *Mosher v. Bay Circuit Judge*, 108 Mich. 503, 66 N. W. 384.

formed.¹⁵⁶ A statute may change the remedies available before judgment, but not those after judgment so as to materially affect rights under a contract,¹⁵⁷ and if the change materially affects rights and interests it is so far a violation of the obligation.¹⁵⁸ The grant of a new remedy by way of review is valid,¹⁵⁹ and the state may provide for new trials and create new tribunals of review, in order to detect fraudulent grants or reverse fraudulent judgments, without impairing contract obligations.¹⁶⁰ The state may suspend the remedy for the enforcement of a contract in time of war and other controlling circumstances; such a statute conduces to the administration of justice.¹⁶¹

— What not an Impairment of Remedy.

The right to imprison for debt is never part of a contract and a law abolishing such imprisonment does not impair any obligation,¹⁶² such a law bars arrest upon a judgment debt,¹⁶³ and bail bonds in effect at the time of its passage are thereby discharged.¹⁶⁴ A statute may take away the remedy by at-

¹⁵⁶ *Paine v. Woodworth*, 15 Wis. 298.

¹⁵⁷ *Oliver v. McClure*, 28 Ark. 555; *Woods v. Buie*, 5 How. (Miss.) 285; *Lockhart v. Ury*, 28 Ga. 345; *Read v. Frankfort Bank*, 23 Me. 318; *Oriental Bank v. Freeze*, 18 Me. 109, 36 Am. Dec. 701.

¹⁵⁸ *Green v. Biddle*, 8 Wheat. 1, 5 L. ed. 547; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Billings v. Riggs*, 56 Ill. 483.

¹⁵⁹ *Stephens v. Cherokee Nation*, 174 U. S. 478, 19 S. Ct. 722, 43 L. ed. 1041.

¹⁶⁰ *League v. De Young*, 11 How. 202, 203, 13 L. ed. 657; *Herman v. Phalen*, 14 How. 79. But see *In re Handley's Estate*, 15 Utah, 212, 62 Am. St. Rep. 926, 49 Pac. 829.

¹⁶¹ *Johnson v. Duncan*, 3 Mart. 531, 6 Am. Dec. 75; *Ex parte Pollard*, 40 Ala. 77.

¹⁶² *Sturges v. Crowninshield*, 4 Wheat. 200, 4 L. ed. 529; *Beers v. Houghton*, 9 Pet. 359, 9 L. ed. 145; *Von Hoffman v. Quincy*, 4 Wall. 553; *Penniman's Case*, 103 U. S. 717, 26 L. ed. 602; *Woodhull v. Wagner*, 1 Baldw. 298, Fed. Cas. No. 17,975; *Towne v. Smith*, 1 Wood. & M. 130, Fed. Cas. No. 14,115; *McCormick v. Busch*, 15 Iowa, 136, 83 Am. Dec. 408; *In re Penniman*, 11 R. I. 338; *Lowden v. Moses*, 3 McCord, 102; *Woodfin v. Hopper*, 4 Humph. 21.

¹⁶³ *In re Nichols*, 8 R. I. 55; *Ex parte Hardy*, 68 Ala. 318.

¹⁶⁴ *Mason v. Haile*, 12 Wheat. 378, 6 L. ed. 660; *Beers v. Hough-*

tachment,¹⁶⁵ or may provide for amendments in attachment suits.¹⁶⁶ Attachment laws do not impair the obligation of contracts between the garnishee and the debtor,¹⁶⁷ and a statute authorizing attachments may apply to actions commenced before its passage.¹⁶⁸ The legislature may deprive a plaintiff in ejectment of the right to recover mesne profits in that form of action,¹⁶⁹ or may provide that judgments in ejectment shall not be rendered until improvements are paid for.¹⁷⁰ The remedies provided for the enforcement of contracts of lease are no part of those contracts; accordingly the remedy of forcible entry and detainer may be abrogated without affecting any obligation,¹⁷¹ and, a fortiori, a statute giving a speedier remedy for unlawful detention would be constitutional.¹⁷² A statute extending the provisions of a law relative to the remedies available to landlords to grants or leases in fee reserving rent does not impair the obligation of grants and leases made prior to its passage.¹⁷³ The remedy of distress for rent is not an essential part of the contract contained in a lease, and it may be abrogated by statute, provided a substantial remedy is left,¹⁷⁴ and such a statute is invalid only as to cases where the right to distrain had accrued before its enactment.¹⁷⁵

ton, 9 Pet. 359, 9 L. ed. 145; *Newton v. Tibbatts*, 7 Ark. 153; *Towsey v. Avery*, 11 Ohio, 93; *Bronson v. Newberry*, 2 Doug. (Mich.) 47.

¹⁶⁵ *Darnley v. State Bank*, 15 Ark. 16; *Krebs v. State Bank*, 15 Ark. 19; *Allis v. State Bank*, 15 Ark. 19; *Leathers v. Shipbuilders' Bank*, 40 Me. 386; *Bigelow v. Pritchard*, 38 Mass. 169. But see *Peninsular etc. Works v. Union etc. Co.*, 100 Wis. 488, 69 Am. St. Rep. 934, 76 N. W. 359, 42 L. R. A. 331.

¹⁶⁶ *Knight v. Dorr*, 36 Mass. 48.

¹⁶⁷ *Philbrick v. Philbrick*, 39 N. H. 468; *Klaus v. City*, 34 Wis. 628.

¹⁶⁸ *Coosa River S. Co. v. Barclay*, 30 Ala. 120.

¹⁶⁹ *Society for the Propagation etc. v. Town of Pawlet*, 4 Pet. 509, 7 L. ed. 927.

¹⁷⁰ *Griswold v. Bragg*, 18 Blatchf. 202, 48 Fed. 519.

¹⁷¹ *Drehman v. Stifle*, 8 Wall. 595, 19 L. ed. 508.

¹⁷² *Brubaker v. Poage*, 1 T. B. Mon. 123, 128.

¹⁷³ *Van Rensselaer v. Smith*, 27 Barb. 104.

¹⁷⁴ *Guild v. Rogers*, 8 Barb. 502; *Van Rensselaer v. Snyder*, 13 N. Y. 299; *Conkey v. Hart*, 14 N. Y. 22.

¹⁷⁵ *Madland v. Benland*, 24 Minn. 372.

Without impairing any contract obligation the legislature may pass an act curing defective levies and sales under execution,¹⁷⁶ or mitigate the severity of the penalties in bonds,¹⁷⁷ or may extend the time for the advertisement of mortgage sales,¹⁷⁸ or diminish the period for publication of notices of foreclosure,¹⁷⁹ or may give to debtors the right to procure obligations of their creditors and use them as setoffs.¹⁸⁰ So, also, the legislature may change the remedy on a judgment,¹⁸¹ may repeal a judgment tax as to judgments on torts,¹⁸² or may abolish judgment liens,^{182a} or may alter the remedy for the enforcement of forfeiture of corporate charters.¹⁸³ A guardian and his bondsmen have no vested right in the remedy on bonds existing when the bond was executed and a change in such remedy is unobjectionable.¹⁸⁴ A change in the law prescribing the order of payment of debts of decedents likewise impairs no contract obligation or vested right.¹⁸⁵ A provision that in money judgments the decree shall be for the judgment and interest is valid,¹⁸⁶ and the legislature may require creditors of corporations to act or be bound by the action of other creditors; such a requirement goes only to the remedy for the recovery of their claims.¹⁸⁷

¹⁷⁶ *Mather v. Chapman*, 6 Conn. 54; *Beach v. Walker*, 6 Conn. 190, *Norton v. Pettibone*, 7 Conn. 319, 18 Am. Dec. 116; *Booth v. Booth*, 7 Conn. 350; *Menges v. Wertman*, 1 Pa. St. 218; *Bell v. Roberts*, 13 Vt. 582; *Selsby v. Redlon*, 19 Wis. 17.

¹⁷⁷ *Wood v. Kennedy*, 19 Ind. 68; *Potter v. Sturdevant*, 4 Me. 154.

¹⁷⁸ *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283; *Starkweather v. Hawes*, 10 Wis. 125.

¹⁷⁹ *Hopkins v. Jones*, 22 Ind. 310; *Webb v. Moore*, 25 Ind. 4.

¹⁸⁰ *Amy v. Shelby County Taxing District*, 114 U. S. 393, 5 S. Ct. 895, 29 L. ed. 172; *Vermont State Bank v. Porter*, 5 Day, 316.

¹⁸¹ *Williams v. Waldo*, 14 Ill. 264; *Grosvenor v. Chesley*, 48 Me. 369; *Sprott v. Reid*, 3 G. Greene, 489.

¹⁸² *Louisiana v. New Orleans*, 109 U. S. 285, 3 S. Ct. 211, 27 L. ed. 936.

^{182a} *Moore v. Holland*, 16 S. Ct. 15.

¹⁸³ *Aurora T. Co. v. Holthouse*, 7 Ind. 59.

¹⁸⁴ *Winslow v. People*, 117 Ill. 152, 7 N. E. 135.

¹⁸⁵ *McLure v. Melton*, 24 S. C. 559, 58 Am. Rep. 272.

¹⁸⁶ *Fleming v. Holt*, 12 W. Va. 144.

¹⁸⁷ *Gilfillan v. Union Canal Co.*, 109 U. S. 404, 3 S. Ct. 304, 27 L. ed. 977, affirming 93 Pa. St. 95.

An act compelling the acceptance of anything but the stipulated payment impairs the obligation of a contract, and where a creditor is entitled to payment in lawful money the legislature cannot deprive him of that right.¹⁸⁸ So where existing law permits the recovery of interest on overdue coupons, a subsequent law declaring interest not recoverable upon interest is inapplicable to such existing contracts;¹⁸⁹ but the discretion exercised by the legislature in prescribing what damages, by way of interest, for delay must be allowed in the payment of judgments is based upon reasons of public policy, and is outside the sphere of private contracts.¹⁹⁰ So, also, an act providing for the forfeiture of land by judicial proceeding for non-payment of interest is no part of the purchaser's contract, and a subsequent act providing for forfeiture without judicial proceeding impairs no obligation.¹⁹¹ Where a deed of trust authorizes the trustee to sell upon default in payment of certain notes, the sale cannot be suspended by statute for a fixed term.¹⁹² Acts changing remedies of or against corporations are not repugnant to the obligation clause; e. g., an act giving a corporation a summary remedy by a proceeding in the nature of attachment against its debtors;¹⁹³ a law changing the mode of administering a remedy provided in a charter;¹⁹⁴ a law authorizing a bank to sue in its own name upon notes given to the cashier for its use;¹⁹⁵ a law providing for the single liability of stockholders,¹⁹⁶ or changing the remedy for enforcing stockholder's liability,¹⁹⁷ or a law changing the method of serving process on corporations.¹⁹⁸

¹⁸⁸ *Blount v. Windley*, 95 U. S. 179, 24 L. ed. 424.

¹⁸⁹ *Koshkonong v. Burton*, 104 U. S. 679, 26 L. ed. 886.

¹⁹⁰ *Morley v. Lake Shore etc. Ry.*, 146 U. S. 171, 13 S. Ct. 54, 36 L. ed. 925.

¹⁹¹ *Wilson v. Standefer*, 184 U. S. 409, 46 L. ed. 612.

¹⁹² *Taylor v. Stearns*, 18 Gratt. 244.

¹⁹³ *Bank of Columbia v. Okely*, 4 Wheat. 243, 4 L. ed. 559.

¹⁹⁴ *Bank of Columbia v. Okely*, 4 Wheat. 245, 4 L. ed. 559.

¹⁹⁵ *Crawford v. Bank of Mobile*, 7 How. 282, 12 L. ed. 700.

¹⁹⁶ *Ochiltree v. Railroad*, 21 Wall. 255, 22 L. ed. 546.

¹⁹⁷ *Fourth Nat. Bank v. Francklyn*, 120 U. S. 755, 7 S. Ct. 757, 30 L. ed. 825.

¹⁹⁸ *Railroad Co. v. Hecht*, 95 U. S. 170, 24 L. ed. 423.

— Acts of Limitation.

Statutes of limitation affect only the remedy given for the enforcement of contracts and not the merits;¹⁹⁹ they rather establish that certain circumstances shall amount to evidence that a contract has been performed than dispense with its performance.²⁰⁰ Being part of the remedy, statutes of limitation may be modified by shortening the time prescribed at the will of the legislature, provided a reasonable time is left for the commencement of an action before the bar takes effect.²⁰¹ The reasonableness of the time allowed for bringing actions on existing contracts is the true test of the validity of such statutes,²⁰²

¹⁹⁹ *Brent v. Bank of Washington*, 10 Pet. 617, 9 L. ed. 547; *Townsend v. Jemison*, 9 How. 413, 13 L. ed. 194; *Campbell v. Holt*, 115 U. S. 626, 6 S. Ct. 209, 29 L. ed. 483.

²⁰⁰ *Sturges v. Crowninshield*, 4 Wheat. 207, 4 L. ed. 529.

²⁰¹ *Jackson v. Lamphire*, 3 Pet. 290, 7 L. ed. 679; *Hawkins v. Barney*, 5 Pet. 468, 8 L. ed. 190; *Bronson v. Kinzie*, 1 How. 315, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 613, 11 L. ed. 397; *Phalen v. Virginia*, 8 How. 168, 12 L. ed. 1030; *Terry v. Anderson*, 95 U. S. 632, 24 L. ed. 365; *Koshkonong v. Burton*, 104 U. S. 675, 26 L. ed. 886; *Vance v. Vance*, 108 U. S. 521, 2 S. Ct. 859, 27 L. ed. 808; *Christmas v. Russell*, 5 Wall. 290, 18 L. ed. 475; *Sohn v. Watterson*, 17 Wall. 596, 21 L. ed. 737; *Mitchell v. Clark*, 110 U. S. 643, 4 S. Ct. 170, 28 L. ed. 279; *Wheeler v. Jackson*, 137 U. S. 255, 11 S. Ct. 76, 34 L. ed. 659; *Turner v. New York*, 168 U. S. 94, 13 S. Ct. 38, 42 L. ed. 392; *Samples v. Bank*, 1 Woods, 523, Fed. Cas. No. 12,278; *Barker v. Jackson*, 1 Paine, 559, Fed. Cas. No. 989; *Cleveland Ins. Co. v. Reed*, 1 Biss. 186, Fed. Cas. No. 2889; *Griffin v. McKenzie*, 7 Ga. 166, 50 Am. Dec. 391; *Blackford v. Peltier*, 1 Blackf. 36; *Lewis v. Harbin*, 5 B. Mon. 567; *Louisville etc. R. R. Co. v. Williams*, 41 S. W. 287; *Mason v. Walker*, 14 Me. 166; *State v. Jones*, 21 Md. 438; *Briscoe v. Anketell*, 28 Miss. 371, 61 Am. Dec. 555; *Stephens v. Bank*, 43 Mo. 389; *Smith v. Tucker*, 17 N. J. 86; *Morse v. Goold*, 11 N. Y. 288, 62 Am. Dec. 107; *Strickland v. Draughan*, 91 N. C. 104; *Pearce v. Patton*, 7 B. Mon. 162, 45 Am. Dec. 61; *Stearns v. Gittings*, 23 Ill. 387; *Newland v. Marsh*, 19 Ill. 376; *McKenny v. Compton*, 18 Ga. 170; *George v. Gardner*, 49 Ga. 441; *Butler v. Palmer*, 1 Hill, 324; *State v. Bermudez*, 12 La. 352; *De Cordova v. Galveston*, 4 Tex. 470; *Coffman v. Bank of Kentucky*, 40 Miss. 29, 90 Am. Dec. 311; *Adamson v. Marshall*, 47 Mo. 273; *Billings v. Hall*, 7 Cal. 1; *Henry v. Henry*, 31 S. C. 1, 9 S. E. 726; *Relyea v. Tomahawk Paper etc. Co.*, 102 Wis. 301, 72 Am. St. Rep. 878, 73 N. W. 412.

²⁰² *McGahey v. Virginia*, 135 U. S. 705, 10 S. Ct. 985, 34 L. ed. 304.

and this reasonableness is to be determined in the first instance by the legislature,²⁰³ subject to final determination by the courts whether the legislature has committed palpable error.²⁰⁴ If a statute fails to fix the time as to existing cases the question is for the courts to determine.²⁰⁵

In determining whether the time remaining is reasonable all the circumstances must be taken into consideration,²⁰⁶ and to invalidate the law it must appear that its unmistakable purpose and effect is to cut off the right of the party and not merely to limit the time.²⁰⁷ The fact that a substantial remedy remains is determinative of the validity of the law.²⁰⁸

A limitation of one year in which to present tax receivable coupons, where there was originally no limitation, has been held unreasonable,²⁰⁹ and a similar limitation on municipal bonds for negotiation in a foreign market has been declared void,²¹⁰ but a limitation of one year for exhibiting claims for damages assessed in condemnation proceedings has been upheld as reasonable.²¹¹ A limitation of six months after the passage of an act, within which actions to redeem lands sold to the state for nonpayment of taxes may be brought is not repugnant to the obligation clause,²¹² and an act which conclusively presumes the release and extinguishment of an irredeemable ground rent on which no payment or demand has

²⁰³ *Terry v. Anderson*, 95 U. S. 633, 24 L. ed. 365; *Wilson v. Iseminger*, 185 U. S. 62, 22 S. Ct. 573, 46 L. ed. 804.

²⁰⁴ *Parmenter v. State*, 135 N. Y. 167, 31 N. E. 1069; *Merchants' Nat. Bank v. Braithwaite*, 7 N. Dak. 358, 66 Am. St. Rep. 653, 75 N. W. 244; *Pereles v. Watertown*, 6 Biss. 79. And see *Smith v. Morrison*, 39 Mass. 430.

²⁰⁵ *Merchants' Nat. Bank v. Braithwaite*, 7 N. Dak. 358, 66 Am. St. Rep. 653, 75 N. W. 244.

²⁰⁶ *McGahey v. Virginia*, 135 U. S. 705, 10 S. Ct. 905, 34 L. ed. 304; *Berry v. Ransdall*, 4 Met. (Ky.) 294; *Eakin v. Raub*, 12 Serg. & R. 372. But see *Pope v. Ashley*, 13 Ark. 268.

²⁰⁷ *Rexford v. Knight*, 11 N. Y. 308.

²⁰⁸ *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283.

²⁰⁹ *McGahey v. Virginia*, 135 U. S. 705, 10 S. Ct. 905, 34 L. ed. 304.

²¹⁰ *Pereles v. Watertown*, 6 Biss. 79, Fed. Cas. No. 10,980.

²¹¹ *Rexford v. Knight*, 11 N. Y. 308.

²¹² *Turner v. New York*, 168 U. S. 94, 18 S. Ct. 38, 42 L. ed. 392.

been made for twenty-one years, and which has not been acknowledged during that period, does not impair any contract obligations where it allows three years for the enforcement of existing rights.²¹³ An act providing that no mortgage or judgment should constitute a lien on land twenty years after the creation of the same, unless the holder should file a note of payment or acknowledgment, was upheld where seven years remained between the passage of the act and the expiration of the limitation.²¹⁴ Any act in the nature of a statute of limitation is valid if it will stand the test stated.²¹⁵ So a statute prescribing the time within which to exercise authority to establish a lottery is valid.²¹⁶ And a statute requiring a new promise to be in writing is valid, if ample time is allowed to enforce the demand.²¹⁷

An extension of the time prescribed for bringing an action does not impair any contract obligation,²¹⁸ and a party may be deprived of the right to plead a statute of limitation by its repeal.²¹⁹ But these statements of general rules are subject to qualification, in that the right to plead the statute of limitations after it has become a bar is a vested right which cannot be taken away by the legislature.²²⁰ So a statute of limi-

²¹³ *Wilson v. Iseninger*, 185 U. S. 62, 22 S. Ct. 573, 46 L. ed. 804; *Biddle v. Hooven*, 120 Pa. St. 221, 13 Atl. 927.

²¹⁴ *Henry v. Henry*, 31 S. C. 1, 9 S. E. 726. For other instances where the time remaining was held reasonable, see *Adamson v. Davis*, 47 Mo. 268; *Adamson v. Marshall*, 47 Mo. 273; *Coffman v. Bank of Kentucky*, 40 Miss. 29, 90 Am. Dec. 311; *Hill v. Boyland*, 10 Miss. 618; *Burt v. Williams*, 24 Ark. 91; *Coxe v. Martin*, 44 Pa. St. 322.

²¹⁵ *George v. Gardner*, 49 Ga. 441; *Bertrand v. Taylor*, 87 Ill. 235.

²¹⁶ *Phalen v. Commonwealth*, 8 How. 163, 12 L. ed. 1030.

²¹⁷ *Briscoe v. Anketell*, 28 Miss. 361, 61 Am. Dec. 553; *Joy v. Thompson*, 1 Doug. 383.

²¹⁸ *Cox v. Berry*, 13 Ga. 306; *Winston v. McCormick*, 1 Ind. 56; *Edwards v. McCaddon*, 20 Iowa, 520; *Swickard v. Bailey*, 3 Kan. 507; *Gilman v. Cutts*, 23 N. H. 376; *Smith v. Tucker*, 17 N. J. 82; *Wardlaw v. Buzzard*, 15 Rich. 158, 94 Am. Dec. 148; *Pleasants v. Roher*, 17 Wis. 577.

²¹⁹ *Bradford v. Shine*, 13 Fla. 393, 7 Am. Rep. 239; *Swickard v. Bailey*, 3 Kan. 507; *Edwards v. McCaddon*, 20 Iowa, 520; *Sturm v. Fleming*, 31 W. Va. 701, 8 S. E. 263.

²²⁰ *Lawrence v. Louisville*, 96 Ky. 595, 49 Am. St. Rep. 309, 29 S. W. 450, 27 L. R. A. 560; *Mellinger v. City of Houston*, 68 Tex.

tations repealing a prior act is void as to actions pending at the time of the repeal.²²¹ The power of the legislature to enact or change statutes of limitation is plenary, subject only to the restriction that such legislation shall not impair contract obligations while professing to operate only upon remedies.²²² A statute changing the condition of a right of action for damages given by statute is a condition precedent to the right to such damages, hence acts directly on the right, and is not a statute of limitation in the ordinary sense of that term.²²³ It has been held that statutes changing periods of limitation do not retroact unless the letter of the statutes or their necessary and inevitable intent so requires.²²⁴

— Exemption Laws.

It may be stated as a general rule that laws creating or extending exemptions from attachment or execution impair the obligation of contracts, so far as they relate to debts previously contracted, in that they operate to destroy the remedy,²²⁵ al-

36, 3 S. W. 249; *Eingartner v. St. Louis Steel Co.*, 103 Wis. 373, 71 Am. St. Rep. 871, 79 N. W. 433. But see *Cox v. Berry*, 13 Ga. 306.

²²¹ *Sturges v. Crowninshield*, 4 Wheat. 207, 4 L. ed. 529; *McElmoyle v. Cohen*, 13 Pet. 312, 10 L. ed. 177; *Society v. Wheeler*, 2 Gall. 141, Fed. Cas. No. 13,156; *Bank of Alabama v. Dalton*, 9 How. 522, 13 L. ed. 242; *Kennebec Land Co. v. Laboree*, 2 Me. 293; *Kingsly v. Cousins*, 47 Me. 91; *Call v. Hagger*, 8 Mass. 429; *Beal v. Nason*, 14 Me. 344; *Woart v. Winnick*, 3 N. H. 473, 14 Am. Dec. 384; *Swickard v. Bailey*, 3 Kan. 507; *Mellinger v. City of Houston*, 68 Tex. 33, 3 S. W. 249.

²²² *Swickard v. Bailey*, 3 Kan. 507.

²²³ *Relyea v. Tomahawk Paper etc. Co.*, 102 Wis. 301, 72 Am. St. Rep. 878, 78 N. W. 412.

²²⁴ *Walker v. Burgess*, 44 W. Va. 399, 67 Am. St. Rep. 775, 30 S. E. 99.

²²⁵ *Gunn v. Barry*, 15 Wall. 624, 21 L. ed. 212; *Edwards v. Kearzey*, 96 U. S. 604, 24 L. ed. 793; *In re Shipman*, 2 Hughes, 228, Fed. Cas. No. 12,791; *Townsend Bank v. Epping*, 3 Woods, 393, Fed. Cas. No. 14,120; *Kelly v. Garrett*, 67 Ala. 309; *Horn v. Wiatt*, 60 Ala. 300; *Wilson v. Brown*, 58 Ala. 65, 29 Am. Rep. 728; *Fearn v. Ward*, 65 Ala. 39; *Cohn v. Hoffman*, 45 Ark. 385; *Wofford v. Gaines*, 53 Ga. 487; *Tuolumne Redemption Co. v. Sedgwick*, 15 Cal. 516; *Forsyth v. Marbury*, R. M. Charl. 324; *Mitchell v. Wolfe*, 70 Ga. 627; *New Orleans Canal & Banking Co. v. New Orleans*, 30 La. Ann. 1371; *Dor-*

though a few cases have held that laws exempting property from execution or attachment operate only upon the remedy given for the enforcement of contracts, and hence may exempt property which was subject to execution or attachment when a contract was made.²²⁶

A distinction has been drawn between exemptions of real property and exemptions of personal property, and while the original expressions of this distinction were but dicta,²²⁷ it seems now to be established that reasonable exemptions of personal property are valid as to prior debts, the reasonableness of the exemption to be determined by the court in each case.²²⁸ In any case where the exemption is palpably too large and materially affects remedies, it will be declared void.²²⁹

A statute absolutely exempting the earnings of married men and heads of families for personal services rendered within sixty days next preceding the levy of execution is directed to the remedy and does not impair previous contracts;²³⁰ but a statute exempting proceeds of life insurance policies from execution is unconstitutional in so far as it applies to antecedent debts.²³¹ An act withdrawing the property of a debtor from

rington v. Myers, 11 Neb. 388, 9 N. W. 555; *Berry v. Ewing*, 91 Mo. 398, 3 S. W. 878; *Danks v. Quackenbush*, 1 N. Y. 129; *Hannum v. McInturf*, 6 Baxt. 225.

²²⁶ *Sneider v. Heidelburger*, 45 Ala. 126; *Hardeman v. Downer*, 39 Ga. 427, 428; *Rockwell v. Hubbell*, 2 Doug. (Mich.) 203, 45 Am. Dec. 450; *Lessley v. Phipps*, 49 Miss. 799; *In re Kehndy*, 2 S. C. 221; *Stephenson v. Osborn*, 41 Miss. 129, 90 Am. Dec. 364.

²²⁷ *Bronson v. Kinzie*, 1 How. 315, 11 L. ed. 143; *Bigelow v. Pritchard*, 21 Pick. 169.

²²⁸ *In re Owens*, 6 Biss. 434, Fed. Cas. No. 10,632; *Rockwell v. Hubbell*, 2 Doug. 199, 45 Am. Dec. 247; *Stephenson v. Osborn*, 41 Miss. 128, 90 Am. Dec. 364; *Morse v. Goold*, 11 N. Y. 291, 62 Am. Dec. 110; *Mineral Point R. R. v. Barron*, 83 Ill. 367; *Grimes v. v. Byrne*, 2 Minn. 89; *Evans v. Montgomery*, 4 Watts & S. 218.

²²⁹ *Edwards v. Kerzey*, 96 U. S. 611, 24 L. ed. 793; *Grimes v. Byrne*, 2 Minn. 89; *Stephenson v. Osborn*, 41 Miss. 119, 90 Am. Dec. 358; *Morse v. Goold*, 11 N. Y. 291, 62 Am. Dec. 110; *Lessley v. Phipps*, 49 Miss. 790.

²³⁰ *Kirkman v. Bird*, 22 Utah, 100, 83 Am. St. Rep. 774, 61 Pac. 338, 58 L. R. A. 669.

²³¹ *Rice v. Smith*, 72 Miss. 42, 16 South. 417; *Skinner v. Holt*, 9

all legal process, leaving only the right to sue, so affects the remedy as to impair the obligation;²³² likewise as to an act providing that all the property of a corporation shall be exempt from execution save in certain cases.²³³ The criterion of reasonableness has been rejected in some cases, and it has been declared that no distinction can properly be taken whether the amount exempted be little or much.²³⁴

The limitation of the prohibition to exemptions of real property has been denied in a few cases which declare it to be within the power of the legislature to exempt real as well as personal property,²³⁵ unless the effect of the law is to enable the holding of large properties rather than to secure the well-being of citizens, in which case it is void.²³⁶ It is immaterial that the new exemption is created by the state constitution; if it impairs the obligation of prior contracts it is void.²³⁷ An exemption law cannot properly divest the lien of a judgment and leave no means for the collection of the debt;²³⁸ but this has been denied in cases where the judgment was based on an action for a tort.²³⁹ An exemption law which merely provides a substitute for a prior law which permitted a debtor to select specified articles up to the value prescribed in the new law, is valid.²⁴⁰ The subjection to execution of property which was

S. Dak. 427, 62 Am. St. Rep. 878, 62 N. W. 878; *In re Heilbron*, 14 Wash. 536, 45 Pac. 153, 35 L. R. A. 602.

²³² *State v. Bank of South Carolina*, 1 Rich. 63.

²³³ *Penrose v. Erie Canal Co.*, 56 Pa. St. 46, 93 Am. Dec. 778.

²³⁴ *Johnson v. Fletcher*, 54 Miss. 628, 28 Am. Rep. 388; *Rice v. Smith*, 72 Miss. 42, 16 South. 417; *Quackenbush v. Danks*, 1 Denio. 128. See, also, *Appeal of Neff*, 21 Pa. St. 243; *Homestead Cases*, 22 Gratt. 266, 12 Am. Rep. 507.

²³⁵ *Hill v. Kessler*, 63 N. C. 436; *Jacobs v. Smallwood*, 63 N. C. 112.

²³⁶ *Cusio v. Douglas*, 3 Kan. 23, 87 Am. Dec. 458.

²³⁷ *Gunn v. Barry*, 15 Wall. 610, 21 L. ed. 212; *Jones v. Brandon*, 48 Ga. 593; *Homestead Cases*, 22 Gratt. 266, 12 Am. Rep. 507.

²³⁸ *Gunn v. Barry*, 15 Wall. 610; *Smith v. Morse*, 2 Cal. 524; *Tillotson v. Millard*, 7 Minn. 513, 82 Am. Dec. 112; *McKeithan v. Terry*, 64 N. C. 25; *Forsyth v. Marbury*, B. M. Charl. 324.

²³⁹ *McAfee v. Covington*, 71 Ga. 273, 51 Am. Rep. 264; *Peerce v. Kitzmiller*, 19 W. Va. 576.

²⁴⁰ *Earle v. Hardie*, 80 N. C. 177; *State v. Ryhue*, 80 N. C. 183.

exempt when a contract was made does not impair the obligation of the contract.²⁴¹

Homestead exemption laws are upon the same footing as other statutes of this character, and a constitutional or statutory provision creating or enlarging such exemptions is void as to prior contracts.²⁴² While this is undoubtedly the correct rule, a number of cases going upon the principle that the right of a man's family to a homestead is paramount and fundamental, and that it is the duty of the state to secure and protect it against creditors, have upheld laws exempting them as against prior debts,²⁴³ and this, notwithstanding the exemption left no property available to creditors.²⁴⁴ Such a law, however, is clearly valid as to debts created after its passage but prior to a declaration of homestead.²⁴⁵ A mortgage cannot be defeated by a homestead exemption law passed after its execution.²⁴⁶ The repeal of an act providing that the homestead of a debtor becomes assets of his estate at his death, for the payment of his debts, is also void as to prior debts.²⁴⁷

An act which takes from a purchaser at an execution sale the right to rents and profits during the period allowed for re-

²⁴¹ *Reardon v. Searcy*, 2 Bibb, 202.

²⁴² *Gunn v. Barry*, 15 Wall. 610, 21 L. ed. 212; *Edwards v. Kearzey*, 96 U. S. 595, 24 L. ed. 793; *Wilson v. Brown*, 58 Ala. 62, 29 Am. Rep. 727; *Nelson v. McCrary*, 60 Ala. 310; *Cohn v. Hoffman*, 45 Ark. 385; *Lessley v. Phipps*, 49 Miss. 800; *Quackenbush v. Danks*, 1 Denie, 132; *Hannum v. McInturf*, 6 Baxt. 230; *Douglas v. Craig*, 13 S. C. 371; *Homestead Cases*, 22 Gratt. 290, 12 Am. Rep. 517; *McLane v. Paschal*, 62 Tex. 102. See, also, *Deering v. Boyle*, 8 Kan. 532, 12 Am. Rep. 487.

²⁴³ *Kimball v. Greig*, 47 Ala. 235; *Marey v. Loyal*, 38 Ga. 538; *Hardeman v. Downer*, 39 Ga. 431; *Helfenstein v. Cave*, 3 Iowa, 289; *Grimes v. Bryne*, 2 Minn. 95; *Hill v. Kessler*, 63 N. C. 440; *Garrett v. Cheshire*, 69 N. C. 403, 12 Am. Rep. 653; *In re Kennedy*, 2 S. C. 223; *Root v. McGrew*, 3 Kan. 215; *Cusic v. Douglas*, 3 Kan. 23, 87 Am. Dec. 462.

²⁴⁴ *Hill v. Kessler*, 63 N. C. 436.

²⁴⁵ *In re Henkel*, 2 Saw. 305, Fed. Cas. No. 6362.

²⁴⁶ *Shelor v. Mason*, 2 Rich., N. S., 233; *Cole v. La Chambre*, 31 La. Ann. 41.

²⁴⁷ *Dunn v. Stevens*, 62 Minn. 380, 64 N. W. 924.

demption is void so far as it purports to retroact,²⁴⁸ and this is true of a statute providing that the grantor under a trust deed shall not be liable for rents and profits during the redemption period.²⁴⁹ But a law making the occupant of land, other than the mortgagor, liable for rent during that period, where he was not liable before, impairs no contract right.²⁵⁰

— Stay Laws as Affecting Remedies.

The so-called "stay laws," which had for their object the postponing, in certain cases, of the rendition of judgments or of the issuance of execution on judgments already rendered, have generally been denied a retrospective operation on the ground that they impaired contract rights.²⁵¹ Clearly, such laws, so far as they abridge the remedy, impair the obligation of contracts,²⁵² and are in conflict with the obligation clause

²⁴⁸ *Travelers' Ins. Co. v. Brouse*, 83 Ind. 62.

²⁴⁹ *Greenfield v. Dorris*, 1 Sneed, 548.

²⁵⁰ *Edwards v. Johnson*, 105 Ind. 594, 5 N. E. 716. And see *Davis v. Reipe*, 114 Ind. 588, 17 N. E. 163.

²⁵¹ *Aycock v. Martin*, 37 Ga. 135, 92 Am. Dec. 64; *Coffman v. Bank of Kentucky*, 40 Miss. 33, 90 Am. Dec. 314; *Stevens v. Andrews*, 31 Mo. 208; *Dorrington v. Myers*, 11 Neb. 388, 9 N. W. 555; *Billmeyer v. Evans*, 40 Pa. St. 327; *Goggans v. Turnipseed*, 1 S. C. 82, 98 Am. Dec. 398; *State v. Carew*, 13 Rich. 511, 91 Am. Dec. 250; *Berry v. Iseman*, 14 Rich. 138, 91 Am. Dec. 266.

²⁵² *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Gantly v. Ewing*, 3 How. 707, 11 L. ed. 794; *Howard v. Bugbee*, 24 How. 461, 16 L. ed. 753; *Scobey v. Gibson*, 71 Md. 572, 79 Am. Dec. 490; *Burt v. Williams*, 24 Ark. 91; *Domire v. Cogly*, 8 Blackf. 177; *Hudspeth v. Davis*, 41 Ala. 389; *Jones v. Crittenden*, 1 Car. Law Rep. 385, 6 Am. Dec. 531; *Garlington v. Priest*, 13 Fla. 559; *Aycock v. Martin*, 37 Ga. 124, 92 Am. Dec. 56; *Webster v. Rose*, 6 Heisk. 93, 19 Am. Rep. 583; *Strong v. Daniel*, 5 Ind. 348; *Barnes v. Barnes*, 8 Jones (N. C.), 366; *Cargill v. Power*, 1 Mich. 369; *Baumgardner v. Circuit Court*, 4 Mo. 50; *Grayson v. Lilly*, 7 Mon. 6; *Jacobs v. Smallwood*, 63 N. C. 112; *Stevens v. Andrews*, 31 Mo. 205; *Townsend v. Townsend*, Peck (Tenn.), 1, 14 Am. Dec. 722; *State v. Carew*, 13 Rich. 498, 91 Am. Dec. 245; *Sequestration Cases*, 30 Tex. 688, 98 Am. Dec. 494; *Canfield v. Hunter*, 30 Tex. 712; *Levison v. Krohne*, 30 Tex. 714; *Bunn v. Gorgas*, 5 Wright, 441; *Billmeyer v. Evans*, 4 Wright, 324; *People v. Hays*, 4 Cal. 127; *Terrill v. Rankin*, 2 Bush (Ky.), 453, 92 Am. Dec. 500; *Frey v. Habenstreit*, 1 Rob. 561; *Hill v. Boyland*, 40 Miss. 618.

of the constitution.²⁵³ It has been held, however, that if they affect the remedy only and not the right, such laws are valid,²⁵⁴ and it is upon the theory that the same remedy existed as before the passage of the stay law, its enforcement being merely postponed, that such laws have been upheld.²⁵⁵ Other cases hold that a law procrastinating the remedy destroys part of the right,²⁵⁶ and the right to suspend the recovery of a debt for one period implies the right of suspending it for another.²⁵⁷

Where a contract provides for a remedy which may be enforced without the assistance of any legal process, if such remedy was legal when the contract was made it cannot be suspended;²⁵⁸ e. g., postponing sales provided for in deeds of trust upon default in payment.²⁵⁹ So a statute which subjects parties to a longer credit than was allowed by law when the contract was made is unconstitutional,²⁶⁰ and a law which provides that certain debts which did not previously bear interest should do so while the act remains in force impairs the right itself and is void.²⁶¹ Nor can the legislature provide for a stay as to contracts which expressly stipulate that no stay shall be allowed.²⁶² A provision for a stay unless the plaintiff will

²⁵³ *Edwards v. Kearzey*, 96 U. S. 601, 24 L. ed. 793; *Barnes v. Barnes*, 8 Jones (N. C.), 366; *Jones v. Crittenden*, 1 Car. Law Rep. 385, 6 Am. Dec. 531; *Jacobs v. Smallwood*, 63 N. C. 112; *Wood v. City of New York*, 34 How. Pr. 501; *Johnson v. Winslow*, 64 N. C. 27.

²⁵⁴ *Coriell v. Ham*, 4 G. Greene (Iowa), 455, 61 Am. Dec. 134; *Grosvenor v. Chesley*, 48 Me. 369; *Swift v. Fletcher*, 6 Minn. 550.

²⁵⁵ *Ex parte Pollard*, 40 Ala. 88; *Farnsworth v. Vance*, 2 Cold. 118; *Beeson v. Beeson*, 1 Harr. 470; *Wardlaw v. Buzzard*, 15 Rich. 160, 94 Am. Dec. 149.

²⁵⁶ *Johnson v. Duncan*, 3 Mart. 531, 6 Am. Dec. 75; *Wood v. Wool*, 14 Rich. 148; *Luter v. Hunter*, 30 Tex. 688, 98 Am. Dec. 494.

²⁵⁷ *Jones v. Crittenden*, 1 Car. Law Rep. 385, 6 Am. Dec. 531.

²⁵⁸ *White v. Crawford*, 84 Pa. St. 433; *Hunt v. Thomas*, 3 Phila. 121.

²⁵⁹ *Taylor v. Stearns*, 18 Gratt. 244.

²⁶⁰ *January v. January*, 7 T. B. Mon. 542, 18 Am. Dec. 211; *Pool v. Young*, 7 Mon. 587.

²⁶¹ *Goggans v. Turnipseed*, 1 Rich. 80, 98 Am. Dec. 397.

²⁶² *Griffith v. Thomas*, 34 Leg. Int. 150; *Billmeyer v. Evans*, 40 Pa. St. 324; *Lewis v. Lewis*, 47 Pa. St. 127.

take property levied on at two-thirds its appraised value is unconstitutional,²⁶³ but a statute providing for a reasonable stay unless the property levied on shall bring two-thirds of its appraised value is unobjectionable as to its retrospective operation.²⁶⁴ On the other hand, a statute adding the condition that no sale under execution shall be made for any sum less than two-thirds of the appraised value of the property levied on violates contract obligations and is void.²⁶⁵ A stay law cannot operate as to a judgment rendered prior to its passage,²⁶⁶ nor can it apply to a mortgage executed prior to its passage,²⁶⁷ although it has been held that a state may grant a stay of execution upon a judgment due to a municipal corporation.²⁶⁸

Reasonableness has been made the criterion of validity in a number of cases, and laws which merely suspended temporarily proceedings for the collection of debts have been upheld.²⁶⁹ So, where a stay is not so unreasonable as to impair the right it is valid.²⁷⁰ And this test has been applied in upholding statutes suspending actions against persons shown to

²⁶³ *Gantly v. Ewing*, 3 How. 717, 11 L. ed. 794; *Bailey v. Gentry*, 1 Mo. 164.

²⁶⁴ *Thompson v. Buckley*, 34 Leg. Int. 148; *Chadwick v. Moore*, 8 Watts & S. 49.

²⁶⁵ *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Gantley v. Ewing*, 3 How. 707, 11 L. ed. 794; *Hunt v. Gregg*, 8 Blackf. 105; *Robards v. Brown*, 40 Ark. 426; *Smoot v. Lafferty*, 2 Gilm. 383; *Rosier v. Hales*, 10 Iowa, 470, 77 Am. Dec. 129; *Rawley v. Hooker*, 21 Ind. 144; *Bailey v. Gentry*, 1 Mo. 164; *Phinney v. Phinney*, 81 Me. 463, 10 Am. St. Rep. 271, 17 Atl. 408, 4 L. R. A. 348; *Swinburne v. Mills*, 17 Wash. 622, 61 Am. St. Rep. 939, 50 Pac. 492. But see *Waldo v. Williams*, 4 Ill. 764; *Catlin v. Munger*, 1 Tex. 598.

²⁶⁶ *Domire v. Cogly*, 8 Blackf. 177.

²⁶⁷ *Harrison v. Styres*, 74 N. C. 290.

²⁶⁸ *Governor v. Gridley*, Walk. 328.

²⁶⁹ *United States v. Conway*, Hemp. 313, Fed. Cas. No. 14,849; *Grimball v. Ross*, Charl. 175; *Barkley v. Glover*, 4 Met. (Ky.) 44; *Johnson v. Duncan*, 3 Mart. 530, 6 Am. Dec. 675; *Chadwick v. Moore*, 8 Watts & S. 49, 42 Am. Dec. 267; *Wolfkill v. Mason*, 16 Abb. Pr. 221; *State v. McGinty*, 41 Miss. 435, 93 Am. Dec. 269; *Breitenbach v. Bush*, 44 Pa. St. 313, 84 Am. Dec. 442; *Coxe v. Martin*, 44 Pa. St. 313.

²⁷⁰ *Huntzinger v. Brock*, 3 Grant, 243.

be in the actual military service of the United States.²⁷¹ But in addition to being reasonable the stay prescribed must be for a definite period,²⁷² as that actions to enforce judgments shall be suspended for seven months.²⁷³ A statute staying all suits "until after the ratification of peace between the United States and the Confederate states" is open to the objection that it is indefinite.²⁷⁴ So, also, as to an act where the period was specified as "during the war."²⁷⁵ A statute allowing a stay for any indefinite time,^{275a} as upon the consent of two-thirds of the creditors, is void.²⁷⁶ So, also, a statute allowing a stay of execution so long as installments are paid is unconstitutional;²⁷⁷ but a statute may provide for a stay of execution on a judgment obtained by confession until the demand is due,²⁷⁸ or until an appraisement is made.²⁷⁹ A statute granting a stay for a certain period upon a judgment superseded with sureties impairs the obligation of contracts made before its passage, and is void,²⁸⁰ and when the liability of bail is fixed the legislature cannot deprive the plaintiff of his right to a judgment.²⁸¹

271 *McCormick v. Busch*, 15 Iowa, 127; *Edmondson v. Ferguson*, 11 Mo. 344; *Lindsey v. Burbridge*, 11 Mo. 545; *Burns v. Crawford*, 34 Mo. 330. But see *Clark v. Martin*, 49 Pa. St. 299; *Hasbrouck v. Shipman*, 16 Wis. 296.

272 *State v. McGinty*, 41 Miss. 435, 93 Am. Dec. 269; *Breitenbach v. Bush*, 44 Pa. St. 313, 84 Am. Dec. 442; *Coxe v. Martin*, 44 Pa. St. 322.

273 *Johnson v. Higgins*, 3 Met. (Ky.) 566; *Barkley v. Glover*, 4 Met. (Ky.) 44.

274 *Luter v. Hunter*, 30 Tex. 688, 98 Am. Dec. 494; *Burt v. Williams*, 24 Ark. 91.

275 *Clark v. Martin*, 3 Grant, 393, 49 Pa. St. 299.

275a *Hudspeth v. Davis*, 41 Ala. 389.

276 *Bunn v. Gorgas*, 41 Pa. St. 441.

277 *Jones v. McMahan*, 30 Tex. 319; *Earle v. Johnson*, 31 Tex. 164.

278 *Wood v. Child*, 20 Ill. 209; *Barnes v. Barnes*, 8 Jones (N. C.), 266.

279 *Catlin v. Munger*, 1 Tex. 598.

280 *Blair v. Williams*, 4 Litt. 34; *Lapsley v. Brashears*, 4 Litt. 47. But see *Farnsworth v. Vance*, 2 Cold. 108.

281 *Lewis v. Brackenridge*, 1 Blackf. 220, 12 Am. Dec. 228.

A statute providing that the obligation on official bonds shall not have the benefit of stay laws or appraisement laws is valid.²⁸² Acts providing for the postponement of trials in certain cases relate to the remedy and are valid,²⁸³ and acts extending the time in which to answer in foreclosure suits have been upheld.²⁸⁴

— State Insolvency Laws.

The power of the states to enact insolvent laws is subject to the prohibition against laws impairing the obligation of contracts; such a law purporting to discharge liability on contracts entered into before its passage impairs the obligation of those contracts and is void.²⁸⁵ In their operation upon residents of the state this is the only restriction upon the power to enact them, and while they cannot retroact upon previously contracted debts, such laws providing for discharge from subsequently contracted debts are valid.²⁸⁶ A state insolvency law

²⁸² *Pierce v. Miell*, 21 Ind. 27.

²⁸³ *Ex parte Pollard*, 40 Ala. 477; *Dours v. Cazentre*, 1 McGloin, 251.

²⁸⁴ *Holloway v. Sherman*, 12 Iowa, 282; *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283; *Starkweather v. Hawes*, 10 Wis. 125.

²⁸⁵ *Sturges v. Crowninshield*, 4 Wheat. 196, 197, 4 L. ed. 529; *Farmers' etc. Bank v. Smith*, 6 Wheat. 134, 5 L. ed. 224; *Bank of United States v. Frederickson*, 2 Fed. Cas. 745; *Golden v. Prince*, 3 Wash. C. C. 313, Fed. Cas. No. 5509; *Smith v. Mead*, 3 Conn. 256, 8 Am. Dec. 184; *Boardman v. De Forest*, 5 Conn. 12; *Schwartz v. Drinkwater*, 70 Me. 410; *Kimberly v. Ely*, 6 Pick. 440; *Vanuxem v. Hazelhursts*, 4 N. J. L. 172, 7 Am. Dec. 582; *Olden v. Hart*, 5 N. J. L. 466; *Roosevelt v. Cebra*, 17 Johns. 108; *Hicks v. Hotchkiss*, 7 Johns. Ch. 297, 11 Am. Dec. 472; *Salters v. Tobias*, 3 Paige Ch. 244; *Elton v. O'Connor*, 6 N. Dak. 6, 68 N. W. 85, 33 L. E. A. 524; *Post v. Riley*, 18 Johns. 54; *In re Wendell*, 19 Johns. 153.

²⁸⁶ *Ogden v. Saunders*, 12 Wheat. 264, 275, 276, 307, 314, 369, 6 L. ed. 606; *In re Reiman*, 7 Ben. 466, Fed. Cas. No. 11,673; *Mather v. Nesbit*, 4 McCrary, 506, 13 Fed. 873; *State v. Curran*, 12 Ark. 352; *Rhodes v. Borden*, 67 Cal. 8, 6 Pac. 850; *Hempstead v. Reed*, 6 Conn. 490, 491; *Orr v. Lisso*, 33 La. Ann. 477; *Felch v. Bugbee*, 43 Me. 11, 77 Am. Dec. 204; *Marsh v. Putnam*, 3 Gray, 555; *Gorely v. Butler*, 147 Mass. 12, 16 N. E. 737; *Blanchard v. Russell*, 13 Mass. 1, 7 Am. Dec. 106; *Wendell v. Lebon*, 30 Minn. 238, 15 N. W. 111; *Stevens v. Brown*, 49 Miss. 599; *Sebring v. Messereau*, 9 Cow. 346;

cannot, however, even as to subsequent contracts, operate extraterritorially.²⁸⁷ This rule is subject to the modification that if a foreign creditor has submitted himself or his claim to the jurisdiction of the courts of the state where the discharge was granted he is barred.²⁸⁸ As to claims existing prior to the passage of the act, of course, a submission to jurisdiction does not make the law operative.²⁸⁹

It is the residence of the creditor, and not the place where the contract was made or to be performed, that determines the operation of state insolvency laws, and a discharge cannot bar action on a claim payable in the state but to a person resident in another state;²⁹⁰ a fortiori where a claim is payable out of

Elton v. O'Connor, 6 N. Dak. 5, 68 N. W. 85, 33 L. R. A. 524; In re Reynolds, 8 B. I. 189, 5 Am. Rep. 617; Merrill v. Bowler, 38 Atl. 116.

²⁸⁷ Sturges v. Crowninshield, 4 Wheat. 207, 4 L. ed. 529; Ogden v. Saunders, 12 Wheat. 255, 6 L. ed. 606; Suydam v. Broadnax, 14 Pet. 75, 10 L. ed. 357; Boyle v. Zacharie, 6 Pet. 635, 8 L. ed. 527; Cook v. Moffatt, 5 How. 295, 12 L. ed. 159; Baldwin v. Hale, 1 Wall. 223, 17 L. ed. 531, affirming 1 Cliff. 514, Fed. Cas. No. 5913; Stevenson v. King, 2 Cliff. 2, Fed. Cas. No. 13,417; Van Reimsdyk v. Kane, 1 Gall. 630, Fed. Cas. No. 16,872; Hinkley v. Mareau, 3 Mason, 88, Fed. Cas. No. 6523; Rhodes v. Borden, 67 Cal. 8, 6 Pac. 850; Hawley v. Hunt, 27 Iowa, 308, 1 Am. Rep. 275; Pugh v. Bussell, 2 Blackf. 266; Norton v. Cook, 9 Conn. 314, 23 Am. Dec. 342; Larrabee v. Talbott, 5 Gill, 439, 46 Am. Dec. 643; Herring v. Selding, 2 Aik. 17; Hicks v. Hotchkiss, 7 Johns. Ch. 301, 11 Am. Dec. 472; Witt v. Follett, 2 Wend. 458; Bradford v. Farrand, 13 Mass. 18; Donnelly v. Corbett, 7 N. Y. 500.

²⁸⁸ Denny v. Bennett, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491; Towne v. Smith, 1 Wood. & M. 127, Fed. Cas. No. 14,115; Newton v. Hagerman, 10 Saw. 462, 22 Fed. 526; Von Glahn v. Varrenne, 1 Dill. 517; Rosenheim v. Morrow, 37 Fla. 488; 20 South. 245; Brown v. Smart, 69 Md. 327, 14 Atl. 470.

²⁸⁹ Easterly v. Goodwin, 35 Conn. 279, 95 Am. Dec. 237.

²⁹⁰ Baldwin v. Hale, 1 Wall. 233, 17 L. ed. 531; Gilman v. Lockwood, 4 Wall. 411, 18 L. ed. 432; Rhodes v. Borden, 67 Cal. 9, 6 Pac. 851; Pullen v. Hilliman, 84 Me. 131, 30 Am. St. Rep. 341, 24 Atl. 795; Kelly v. Drury, 9 Allen, 28; Stoddard v. Harrington, 100 Mass. 88, 97 Am. Dec. 81; Phoenix National Bank v. Batcheller, 151 Mass. 590, 24 N. E. 917, 8 L. R. A. 644; Perley v. Mason, 64 N. H. 7, 3 Atl. 630; Carbee v. Mason, 64 N. H. 11, 4 Atl. 792; Pratt v. Reath, 44 N. Y. 599, 4 Am. Rep. 719; Phelps v. Borland, 103 N. Y. 410, 57 Am. Rep. 756, 9 N. E. 309; Robert v. Atherton, 60 Vt. 565, 6 Am. St.

the state to a nonresident,²⁹¹ or where a judgment has been rendered in another state in favor of a nonresident.²⁹² A debt due a partnership is not barred if one member thereof was not a resident of the state of discharge.²⁹³ If the attorney of a foreign creditor takes a note for the debt, the courts will regard the rights of the beneficial owner.²⁹⁴ A state law is valid against a foreign creditor, however, so far as it merely releases the person of the debtor from imprisonment,²⁹⁵ and the rule does not operate to prevent a state from providing that debtors may assign for the benefit of all creditors, resident and non-resident.²⁹⁶

Laws which merely abolish imprisonment for debt affect only the creditor's remedy against an insolvent and do not impair the obligation of contracts,²⁹⁷ and a statute changing the mode of procedure to obtain a discharge from imprisonment does not affect any substantial right.²⁹⁸ The effect of a law abolishing imprisonment for debt is to discharge bail bonds existing at the time of its passage.²⁹⁹

Rep. 154, 15 Atl. 160; *Stirn v. McQuade*, 66 N. H. 404, 49 Am. St. Rep. 623, 22 Atl. 452.

²⁹¹ *McKim v. Willis*, 83 Mass. 512.

²⁹² *Bean v. Loryea*, 81 Cal. 153, 22 Pac. 513; *Lowenberg v. Levine*, 93 Cal. 220, 28 Pac. 942, 16 L. R. A. 159.

²⁹³ *Chase v. Henry*, 166 Mass. 579, 55 Am. St. Rep. 424, 44 N. E. 988.

²⁹⁴ *Iseley v. Merian*, 61 Mass. 242; *Crow v. Coons*, 27 Mo. 512.

²⁹⁵ *Glenn v. Humphreys*, 4 Wash. C. C. 424, Fed. Cas. No. 5880; *Choteau v. Richardson*, 94 Mass. 368; *Carey v. Conrad*, 2 Miles, 92; *Donnelly v. Corbett*, 7 N. Y. 500.

²⁹⁶ *Denny v. Bennett*, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491.

²⁹⁷ *Sturges v. Crowninshield*, 4 Wheat. 200, 4 L. ed. 529; *In re Penniman*, 103 U. S. 717, 26 L. ed. 602; *affirming*, 11 B. L. 338; *Woodhull v. Wagner*, 1 Baldw. 298, Fed. Cas. No. 19,975; *Towne v. Smith*, 1 Wood. & M. 130, Fed. Cas. No. 14,115; *Beers v. Houghton*, 9 Pet. 329, 9 L. ed. 145; *Planters' Bank v. Sharp*, 6 How. 328, 12 L. ed. 447; *Newton v. Tibbatts*, 7 Ark. 150; *Taylor v. Keeler*, 30 Conn. 324; *Fisher v. Lacky*, 6 Blackf. 373; *Ray v. Cannon*, 2 Mart. 26; *Bronson v. Newberry*, 2 Doug. (Mich.) 38; *Brown v. Dillahunt*, 12 Miss. 713, 43 Am. Dec. 499; *Woodfin v. Hopper*, 4 Humph. 21.

²⁹⁸ *Oriental Bank v. Freeze*, 18 Me. 109, 36 Am. Dec. 701; *Morse v. Rice*, 21 Me. 53.

²⁹⁹ *Mason v. Haile*, 12 Wheat. 378, 6 L. ed. 660; *Beers v. Houghton*, 9 Pet. 359, 9 L. ed. 145; *Newton v. Tibbatts*, 7 Ark. 153; *Towsey v. Avery*, 11 Ohio, 93; *Bronson v. Newberry*, 2 Doug. (Mich.) 47, 48.

An act providing for the discharge of debtors from all future actions at the suit of suing creditors or creditors who have received dividends from the debtor's estate is valid,³⁰⁰ as also is a law allowing debtors to assign for the benefit of consenting creditors.³⁰¹ The legislature may also provide that creditors of insolvent corporations must dissent from measures adopted for the welfare of all parties, or be deemed to assent thereto.³⁰² A law providing for the distribution of the assets of an insolvent estate is valid as against general creditors,³⁰³ and an act to secure the payment of debts without preference of the debts of certain manufacturing corporations organized under general law does not impair contract obligations.³⁰⁴ General provisions for the appointment of receivers for insolvent corporations are unobjectionable,³⁰⁵ but it is beyond the power of the legislature to provide for receivers for property in possession of mortgagees under existing chattel mortgages, unless it is imperatively necessary to secure the rights of other parties.³⁰⁶ The assignment of a corporation's property and the cancellation of its charter with the legislature's consent is not unconstitutional as violating the corporation's contracts,³⁰⁷ and a state law authorizing banks to assign for the benefit of their creditors does not impair a contract by which a bank receives its notes in payment of debts.³⁰⁸ Acts providing for the dissolution of attachments made within a certain time prior to assignments do not impair contract obligations.³⁰⁹ So, also,

³⁰⁰ *Alexander v. Gibson*, 1 Nott & McC. 480; *Downes v. Parshall*, 3 Wyo. 425, 26 Pac. 994.

³⁰¹ *Keating v. Vaughn*, 61 Tex. 518.

³⁰² *Gilfillan v. Union Canal Co.*, 109 U. S. 404, 3 S. Ct. 304, 27 L. ed. 977, affirming 93 Pa. St. 95.

³⁰³ *Appeal of Deichman*, 2 Whart. 395, 30 Am. Dec. 271.

³⁰⁴ *Story v. Furman*, 25 N. Y. 214.

³⁰⁵ *Hall v. Carey*, 5 Ga. 239.

³⁰⁶ *Patten v. Accessory Traction Co.*, 13 How. Pr. 502, 4 Abb. Pr. 235.

³⁰⁷ *Mumma v. Potomac Co.*, 8 Pet. 287, 8 L. ed. 945.

³⁰⁸ *Knox v. Exchange Bank*, 12 Wall. 384, 20 L. ed. 414.

³⁰⁹ *Denny v. Bennett*, 128 U. S. 489, 9 S. Ct. 134, 32 L. ed. 491; *Sloane v. Chiniquy*, 22 Fed. 213; *Bank of Columbia v. Overstreet*, 10 Bush (Ky.), 148; *Bigelow v. Pritchard*, 21 Pick. 169; *Wendell v. Lebon*, 30 Minn. 234; *Baldwin v. Buswell*, 52 Vt. 57.

an act providing that conveyances preferring creditors made within four months before the commencement of insolvency proceedings shall be void is not unconstitutional as to a non-resident creditor whose conveyance was made subsequently;³¹⁰ such an act is a legitimate regulation of transfers of property.³¹¹

After the creation of debts of equal rank the legislature cannot interfere to provide that one class of debts shall have priority over the other.³¹² On the other hand, it has been held that a law creating preference in favor of certain classes of debts constitutes no part of a contract, and an act passed after a debt was contracted abrogating the preference is valid.³¹³ An insolvent law discharging the person and after-acquired property is not repugnant to the constitution.³¹⁴

An amendment to an insolvent act is ineffectual to discharge a debtor from liability previously contracted, the effect of the amendment being to reduce the number of creditors who may grant a release;³¹⁵ but an amendatory act which is more stringent and burdensome on the debtor than the act amended cannot be objected to by a creditor on the ground that it is retroactive.³¹⁶ Creditors who have accepted dividends under an assignment by a corporation cannot claim the invalidity of the assignment law in order to collect the balance from the stockholders.³¹⁷

³¹⁰ *Brown v. Smart*, 145 U. S. 454, 12 S. Ct. 958, 36 L. ed. 773, affirming 69 Md. 320, 14 Atl. 468.

³¹¹ *Knower v. Haines*, 31 Fed. 513. But see *Lloyd v. Akin*, 78 N. C. 258.

³¹² *Sun Mutual Ins. Co. v. Beard of Liquidation*, 24 Fed. 4; *Atchafalaya R. R. etc. Co. v. Bean*, 3 Rob. (La.) 415. But see *Luther v. Saylor*, 8 Mo. App. 424; *Umbenhauer v. Miller*, 1 Woodw. Dec. 69.

³¹³ *Inglefritz v. Inglefritz*, 5 Watts, 158; *Appeal of Deichman*, 2 Whart. 395, 30 Am. Dec. 271.

³¹⁴ *Wilson v. Matthews*, 32 Ala. 332.

³¹⁵ *In re Wendell*, 19 Johns. 153.

³¹⁶ *Hundley v. Chaney*, 65 Cal. 363, 4 Pac. 238.

³¹⁷ *Van Hook v. Whitlock*, 26 Wend. 53, 37 Am. Dec. 248.

— **Mortgage and Redemption Laws.**

The right to redeem according to the laws existing at the time a mortgage is executed constitutes part of the mortgage contract and not part of the remedy merely,³¹⁸ and it is a right which inheres in the contract as to both mortgagor and mortgagee. Accordingly a law giving a right of redemption where none previously existed, or extending the period allowed, so alters the remedy of the creditor as to impair the obligation of an existing mortgage.³¹⁹ On the other hand, laws abolishing the right to redeem or shortening the period previously allowed cannot operate to impair the rights of a mortgagor under an existing mortgage.³²⁰

A statute giving the right to redeem at any time within a certain period cannot retroact.³²¹ The legislature may give to the mortgagor the right to remain in possession during the redemption period,³²² but a statute providing that the mortgagor shall not be liable for rents and profits after the sale is void

³¹⁸ *Brine v. Insurance Co.*, 96 U. S. 637, 639, 24 L. ed. 858.

³¹⁹ *Bronson v. Kinzie*, 1 How. 318, 11 L. ed. 143; *Howard v. Bugbee*, 24 How. 464, 16 L. ed. 753; *Clark v. Reyburn*, 8 Wall. 322, 19 L. ed. 354; *Barnitz v. Beverly*, 163 U. S. 129, 16 S. Ct. 1043, 41 L. ed. 93, reversing 55 Kan. 469, 49 Am. St. Rep. 260, 42 Pac. 726, 31 L. R. A. 74; *Lehman v. Moore*, 93 Ala. 189, 9 South. 592; *Robards v. Brown*, 40 Ark. 426; *Oliver v. McClure*, 28 Ark. 561; *Allen v. Allen*, 95 Cal. 197, 30 Pac. 215, 16 L. R. A. 646; *Bixby v. Bailey*, 11 Kan. 368; *Watkins v. Glenn*, 55 Kan. 429, 40 Pac. 319; *Phinney v. Phinney*, 81 Me. 462, 10 Am. St. Rep. 270, 17 Atl. 408, 4 L. R. A. 348; *Benson v. Bunting*, 127 Cal. 532, 78 Am. St. Rep. 81, 59 Pac. 991; *State v. Sears*, 29 Or. 508, 54 Am. St. Rep. 808, 43 Pac. 482; *Gorham v. Wing*, 10 Mich. 498; *Heyward v. Judd*, 4 Minn. 490; *Canadian etc. Co. v. Blake*, 24 Wash. 102, 85 Am. St. Rep. 946, 63 Pac. 1100.

³²⁰ *Clark v. Reyburn*, 8 Wall. 322, 19 L. ed. 354; *Singer Mfg. Co. v. McCollock*, 24 Fed. 669; *Cargill v. Power*, 1 Mich. 371, 372; *Beck v. Burnett*, 22 Ala. 822. But see *State ex rel. v. Gilliam*, 18 Mont. 99, 44 Pac. 396; *Tuolumne Redemption Co. v. Sedgwick*, 15 Cal. 528, 529.

³²¹ *Howard v. Bugbee*, 24 How. 461, 16 L. ed. 753, overruling 32 Ala. 317; *Seale v. Mitchell*, 5 Cal. 401; *Thorn v. San Francisco*, 4 Cal. 127; *Malony v. Fortune*, 14 Iowa, 417.

³²² *Heyward v. Judd*, 4 Minn. 483; *Berthold v. Holman*, 12 Minn. 335; *Berthold v. Fox*, 13 Minn. 501, 97 Am. Dec. 243.

so far as it purports to apply to prior mortgages.³²³ Where the contract between the mortgagor and mortgagee is not affected, a law passed subsequent to the mortgage providing that an occupant other than the mortgagor shall be liable for the rents and profits during the redemption period is unobjectionable.³²⁴

Laws providing for a stay of foreclosure under mortgages, or denying the right to sell under deeds of trust without legal proceedings, are also subject to the constitutional prohibition and cannot operate retrospectively,³²⁵ although the allowance to a defendant of six months in which to answer has been held unobjectionable.³²⁶ The legislature cannot change the estate which the trustee is authorized to sell under a deed of trust and create or extend a redemption period;³²⁷ but a statute may prescribe a shorter period for the advertising of foreclosure sales, and apply to existing mortgages.³²⁸ A law authorizing sales on credit cannot operate as to mortgages executed previously.³²⁹ So, also, a mortgagee, having title, is entitled to ejectment upon breach of condition before foreclosure, and this right cannot be impaired by a subsequent statute,³³⁰ and where a mortgagee takes title to the growing crops of a mortgagor or his tenant, who leased with knowledge of the mortgage, a subsequent statute exempting the tenant's property is inoperative to defeat any right of the mortgagee under the previous law.³³¹

The same rule exists in the case of sales of property under execution to satisfy judgments.³³² A law authorizing the re-

³²³ *Greenfield v. Dorris*, 1 Sneed, 548; *Canadian etc. Co. v. Blake*, 24 Wash. 102, 85 Am. St. Rep. 946, 63 Pac. 1100.

³²⁴ *Edwards v. Jordan*, 105 Ind. 594, 5 N. E. 716; *Davis v. Reipe*, 114 Ind. 588, 17 N. E. 163.

³²⁵ *Fisher v. Green*, 142 Ill. 93, 31 N. E. 176; *Fanning v. Kerr*, 7 Iowa, 462; *Taylor v. Stearns*, 18 Gratt. 286; *Swinburne v. Mills*, 17 Wash. 617, 61 Am. St. Rep. 936, 50 Pac. 490.

³²⁶ *Von Baumbach v. Bade*, 9 Wis. 576, 76 Am. Dec. 287.

³²⁷ *Heyward v. Judd*, 4 Minn. 483; *Goenen v. Schroeder*, 8 Minn. 387; *Carroll v. Rossiter*, 10 Minn. 174.

³²⁸ *James v. Stull*, 9 Barb. 482.

³²⁹ *Tooley v. Gridley*, 3 Smedes & M. 516, 41 Am. Dec. 632.

³³⁰ *Mundy v. Monroe*, 1 Mich. 75, 76.

³³¹ *Reed v. Swan*, 133 Mo. 109, 34 S. W. 485.

³³² *People v. San Francisco*, 4 Cal. 139; *Scobey v. Gibson*, 17 Ind.

demption of property sold at forced sale impairs the obligation of contracts.³³³ The legislature cannot extend the time for the redemption of land sold for taxes,³³⁴ nor give a right to redeem land sold to satisfy municipal claims.³³⁵ Nor can the legislature, as to tax sales previously made, amend a statute allowing redemption so as to impose new and more onerous conditions upon the exercise of the right.³³⁶ So, also, laws for the release and discharge of securities are in conflict with this provision,³³⁷ and laws allowing a debtor to remove his property are void as to prior judgment liens.³³⁸

A distinction may be drawn, however, between laws providing for redemption before execution and sale and those permitting it after. A statute may provide that all judicial sales shall be made subject to the right of redemption without violating the obligation of existing judgments.³³⁹ But after a sale under execution, the rights of purchaser and judgment debtor are fixed as by contract and the legislature cannot subsequently authorize redemption after a longer time or for a less sum.³⁴⁰ Acts depriving purchasers at execution sales of

578, 79 Am. Dec. 492; *Danks v. Quackenbush*, 1 N. Y. 132; *Hepburn v. Kerr*, 9 Humph. 728, 51 Am. Dec. 686; *Collins v. Collins*, 70 Ky. 91; *Inglehart v. Wolfen*, 20 Md. 32.

³³³ *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Gantly v. Ewing*, 3 How. 716, 11 L. ed. 794; *Howard v. Bugbee*, 24 How. 464, 16 L. ed. 753; *Weaver v. Maillot*, 15 La. Ann. 395; *Billmeyer v. Evans*, 42 Pa. St. 324; *Bunn v. Gorgas*, 41 Pa. St. 441; *Oliver v. McClure*, 28 Ark. 555; *Scobey v. Gibson*, 17 Ind. 572, 79 Am. Dec. 490.

³³⁴ *Robinson v. House*, 13 Wis. 341; *Dikeman v. Dikeman*, 11 Paige, 484. But see *Gault's Appeal*, 33 Pa. St. 94.

³³⁵ *Hull v. State*, 29 Fla. 88, 30 Am. St. Rep. 98, 11 South. 98, 16 L. R. A. 308; *Gault's Appeal*, 33 Pa. St. 101.

³³⁶ *Teralta Land etc. Co. v. Shaffer*, 116 Cal. 518, 53 Am. St. Rep. 194, 48 Pac. 613.

³³⁷ *Swift v. Fletcher*, 6 Minn. 550.

³³⁸ *Tillotson v. Millard*, 7 Minn. 513, 82 Am. Dec. 112.

³³⁹ *Moore v. Martin*, 38 Cal. 428; *Turner v. Watkins*, 31 Ark. 429; *Tuolumne Redemption Co. v. Sedgwick*, 15 Cal. 515; *Wilson v. Wold*, 21 Wash. 398, 75 Am. St. Rep. 846, 58 Pac. 223.

³⁴⁰ *Thresher v. Atchison*, 117 Cal. 73, 59 Am. St. Rep. 159, 48 Pac. 1020.

the right to rents and profits up to the time of redemption are denied retroactive effect as to prior sales;³⁴¹ but where a sale was made after the passage of the law, there can be no objection to the law, for it does not impair any obligation as between the original debtor and creditor, and all sales under execution are to be governed by the laws in force at the time of sale,³⁴² and it is on this theory that it was held that when a mortgagor applies to a court for the enforcement of his mortgage he must take the remedy as he finds it.³⁴³

Appraisement laws are subject to the constitutional prohibition against impairing the obligation of contracts, and an act providing for the appraisal of mortgaged property and forbidding sales for less than two-thirds of the appraised value cannot apply to mortgages previously executed.³⁴⁴ The law in regard to valuation and appraisement in force when a mortgage is executed enters into and becomes part of the mortgage contract and cannot be affected by subsequent laws,³⁴⁵ and sales made pursuant to a later law may be avoided.³⁴⁶ The judgment of foreclosure is not a new contract which will give the new law operation.³⁴⁷ It has been held that a contract made in one state could not be deemed to have been made with reference to the law of another, and a valuation law of the latter state, passed after the execution of a contract, governed a sale to satisfy a judgment on the contract.³⁴⁸

³⁴¹ *Greenfield v. Dorris*, 1 Sneed, 550; *Travelers' Ins. Co. v. Brouse*, 83 Ind. 66.

³⁴² *Davis v. Rupe*, 114 Ind. 594, 17 N. E. 116; *Wilson v. Wold*, 21 Wash. 398, 75 Am. St. Rep. 846, 58 Pac. 223.

³⁴³ *Heyward v. Judd*, 4 Minn. 483.

³⁴⁴ *Bronson v. Kinzie*, 1 How. 318, 319, 11 L. ed. 143; *McCracken v. Hayward*, 2 How. 608, 11 L. ed. 397; *Gantly v. Ewing*, 3 How. 707, 11 L. ed. 794; *Moore v. Fowler*, Hemp. 536, Fed. Cas. No. 9761; *Robards v. Brown*, 40 Ark. 423; *Rosier v. Hale*, 10 Iowa, 470, 77 Am. Dec. 127; *Olmstead v. Kellogg*, 47 Iowa, 460; *Benedict v. Thompson*, Walk. Ch. 447; *Willard v. Longstreet*, 2 Doug. 175. *Contra*, *United States v. Conway*, Hemp. 314, Fed. Cas. No. 14,849; *Chadwick v. Moore*, 8 Watts & S. 49, 42 Am. Dec. 267.

³⁴⁵ *Dorrington v. Myers*, 11 Neb. 388, 9 N. W. 555; *Lancaster Sav. Inst. v. Reigart*, 2 Clarke, 238.

³⁴⁶ *Sheets v. Peabody*, 7 Blackf. 614, 43 Am. Dec. 108; *Franklin v. Thurston*, 8 Blackf. 161; *Burton v. Emerson*, 4 G. Greene, 395.

³⁴⁷ *Crane v. Hardy*, 1 Mich. 62.

³⁴⁸ *Hefferlin v. Sinsinderfer*, 2 Kan. 403, 85 Am. Dec. 593.

— Lien Laws.

Liens created by law are subject to alteration, modification or repeal.³⁴⁹ A lien created by statute in favor of a creditor on property of his debtor is merely a part of the remedy afforded for the collection of his debt,³⁵⁰ and a law creating a lien upon the property of a debtor in favor of an existing contract creditor is valid.³⁵¹ So, also, the legislature may give to mechanics and laborers a lien for their services although at the time the contract to build was executed no such right existed;³⁵² likewise as to liens given to materialmen,³⁵³ and laws giving such liens priority over existing encumbrances have been upheld.³⁵⁴ Merely altering and enlarging the remedy for the enforcement of mechanics' liens after foreclosure sale does not impair the contracts of the mortgagee or the purchaser.³⁵⁵ Nor does a statute extending the time for the enforcement of

³⁴⁹ *Evans v. Montgomery*, 4 Watts & S. 218; *Patin v. Prejean*, 7 La. 301; *Woodbury v. Grimes*, 1 Colo. 100; *Templeton v. Horne*, 82 Ill. 401; *Wilson v. Simon*, 91 Md. 1, 80 Am. St. Rep. 427, 45 Atl. 1022.

³⁵⁰ *Bangor v. Goding*, 35 Me. 73, 56 Am. Dec. 688.

³⁵¹ *Gordon v. Canal Co.*, 1 McAr. 513, Fed. Cas. No. 5621; *Brien v. Clay*, 1 E. D. Smith, 649; *Bolton v. Johns*, 5 Pa. St. 145, 47 Am. Dec. 404. But see *Kinney v. Sherman*, 28 Ill. 520.

³⁵² *Gordon v. Canal Co.*, 1 McAr. 513, Fed. Cas. No. 5621; *O'Neil v. St. Olaf's School*, 26 Minn. 329, 4 N. W. 47; *Colpetzer v. Trinity Church*, 24 Neb. 113, 37 N. W. 931; *Sullivan v. Brewster*, 1 E. D. Smith, 739; *Albright v. Smith*, 2 S. Dak. 577, 51 N. W. 590, 3 S. Dak. 631, 54 N. W. 816; *Bolton v. Johns*, 5 Pa. St. 145, 47 Am. Dec. 404; *Spokane etc. Co. v. McChesney*, 1 Wash. 609, 21 Pac. 198. But see *Kinney v. Sherman*, 28 Ill. 520.

³⁵³ *Kellogg v. Howes*, 81 Cal. 170, 22 Pac. 509, 6 L. R. A. 588; *Davies-Henderson Lumber Co. v. Gottschalk*, 81 Cal. 641, 22 Pac. 860; *Doughty v. Devlin*, 1 E. D. Smith, 625; *Gurney v. Walsham*, 16 R. I. 698, 19 Atl. 323; *Albright v. Smith*, 3 S. Dak. 631, 54 N. W. 816.

³⁵⁴ *Walker v. Mississippi Valley etc. Ry. Co.*, Fed. Cas. No. 17,079; *Sitton v. Dubois*, 14 Wash. 624, 45 Pac. 303; *Wimberly v. Mayberry*, 94 Ala. 240, 10 South. 157, 14 L. R. A. 305; *Garr v. Clements*, 4 N. Dak. 559, 62 N. W. 640. But see *Yeatman v. Foster Co.*, 2 N. Dak. 421, 33 Am. St. Rep. 797, 51 N. W. 721; *Meyer v. Berlandi*, 39 Minn. 438, 12 Am. St. Rep. 663, 40 N. W. 513, 1 L. R. A. 777.

³⁵⁵ *Red River Valley Bank v. Craig*, 181 U. S. 558, 21 S. Ct. 703, 45 L. ed. 994.

mechanics' liens impair any contract obligations.³⁵⁶ There can be no objection to any law which operates merely upon the remedy given by a mechanic's lien law.³⁵⁷ A party may be deprived of a lien given him by statute,³⁵⁸ unless the right to the lien has become vested.^{358a} And if the rights of the parties to a building contract have accrued before the passage of amendments to a mechanic's lien law the amendments cannot govern.³⁵⁹

Judgment liens are subject to the same rules, and a law providing that a judgment shall constitute a lien upon the debtor's property may apply to existing judgments.³⁶⁰ The repeal of a statute giving a judgment creditor a lien has been held retroactive,³⁶¹ but later cases have declared the judgment lien to be a material part of the remedy, which cannot be abrogated without impairing existing contracts.³⁶² A statute requiring the recordation of judgments in order to preserve the lien may retroact,³⁶³ and a statute authorizing the sale of property free from encumbrance and transferring the lien to the proceeds is

³⁵⁶ *Garland v. Irrigation Co.*, 9 Utah, 360, 34 Pac. 370.

³⁵⁷ *Albright v. Smith*, 2 S. Dak. 577, 51 N. W. 590; *Best v. Baumgardner*, 122 Pa. St. 17, 15 Atl. 691, 1 L. R. A. 356; *Osborn v. D. Johnson etc. Co.*, 99 Ala. 309, 13 South. 776.

³⁵⁸ *Wilson v. Simon*, 91 Md. 1, 80 Am. St. Rep. 427, 45 Atl. 1022.

^{358a} *Kirkwood v. Hoxie*, 95 Mich. 62, 35 Am. St. Rep. 549, 54 N. W. 720.

³⁵⁹ *Spangler v. Green*, 21 Colo. 505, 52 Am. St. Rep. 259, 42 Pac. 674.

³⁶⁰ *Livingston v. Moore*, 7 Pet. 546-562; *Moore v. Letchford*, 35 Tex. 213, 14 Am. Rep. 367.

³⁶¹ *Bank v. Longworth*, 1 McLean, 35, Fed. Cas. No. 923; *Iverson v. Shorter*, 9 Ala. 713; *Beck v. Burnett*, 22 Ala. 822; *Daily v. Burko*, 28 Ala. 328; *Curry v. Landers*, 35 Ala. 280; *Moore v. Holland*, 16 S. C. 24; *McCormick v. Alexander*, 2 Ohio, 285.

³⁶² *Murphy v. Gaskins*, 28 Gratt. 207; *Ratcliffe v. Anderson*, 31 Gratt. 105, 31 Am. Rep. 716; *Gilman v. Tucker*, 128 N. Y. 190, 26 Am. St. Rep. 464, 28 N. E. 1040, 13 L. R. A. 304; *Merchants' Bank v. Ballou*, 98 Va. 112, 81 Am. St. Rep. 715, 32 S. E. 481, 44 L. R. A. 306.

³⁶³ *Louisiana v. New Orleans*, 102 U. S. 207, 26 L. ed. 132; *Tarp-ley v. Hamer*, 17 Miss. 310.

valid;³⁶⁴ but a statute permitting a sale whether the property brings the amount of the encumbrance, or giving preference to other claims on the proceeds, is void.³⁶⁵

The legislature cannot discharge absolutely a lien already existing under attachment, although it may suspend the enforcement of the lien;³⁶⁶ nor can the legislature change a privileged into an ordinary creditor.³⁶⁷ An act whereby the legislature undertakes to restore an attachment already dissolved and after the property has been sold to a bona fide purchaser is equally void.³⁶⁸ The legislature cannot interfere with a lien created by special contract whereby a debtor makes his property absolutely liable for his debts.³⁶⁹

— Rights of Action and Defenses.

A statute creating a right of action on a contract previously executed or on a debt previously incurred does not impair any contract obligation; it rather declares a means by which the obligation may be enforced.³⁷⁰ So where an equitable right exists the legislature may create a legal remedy in favor of the holder,³⁷¹ and where a moral obligation exists for which there

³⁶⁴ *Potts v. Water Power Co.*, 9 N. J. Eq. 592; *Potts v. New Jersey Arms Co.*, 17 N. J. Eq. 395.

³⁶⁵ *Martin v. Somerville*, 3 Wall. Jr. 206, 27 How. Pr. 161, Fed. Cas. No. 9165.

³⁶⁶ *Ryan v. Wessels*, 15 Iowa, 145.

³⁶⁷ *Johnson v. Duncan*, 3 Mart., O. S., 530; *Sebatier v. Creditors*, 6 Mart., N. S., 585.

³⁶⁸ *Ridlon v. Cressey*, 65 Me. 128.

³⁶⁹ *Sebatier v. Creditors*, 6 Mart., N. S., 589.

³⁷⁰ *Ewell v. Daggs*, 108 U. S. 151, 2 S. Ct. 408, 27 L. ed. 682; *Milne v. Huber*, 3 McLean, 212, Fed. Cas. No. 9617; *Leavitt v. Railway Co.*, 90 Me. 164, 37 Atl. 890, 38 L. R. A. 152; *Police Jury v. McDonough*, 7 Mart., O. S., 8; *Wilbur v. Gilmore*, 21 Pick. 250; *James v. Emmet Min. Co.*, 55 Mich. 335, 21 N. W. 361; *Watson v. Chicago etc. Ry. Co.*, 46 Minn. 321, 48 N. W. 1129. But see *Coosa River Steamboat Co. v. Barclay*, 30 Ala. 120; *Sutherland v. De Leon*, 1 Tex. 250, 46 Am. Dec. 100.

³⁷¹ *Whipple v. Farrar*, 3 Mich. 436, 64 Am. Dec. 99; *Atkins v. Atkins*, 18 Neb. 474, 25 N. W. 724; *Pittsburg etc. Turnpike Co. v. Commonwealth*, 2 Watts, 433.

is no remedy at law the legislature may provide a remedy.³⁷² The repeal of usury laws, thus giving a right of action on a contract previously unenforceable, does not impair contract obligations.³⁷³ A contract for the payment of money to an association which has no corporate existence may be rendered actionable by subsequent incorporation.³⁷⁴ The legislature may allow a suit on an official bond instead of *scire facias* on the judgment;³⁷⁵ or may repeal a statute prohibiting suits against Indians;³⁷⁶ or may allow one firm to sue another although some of the members of one are members of the other;³⁷⁷ or may authorize one plaintiff to recover, although the other does not establish his title;³⁷⁸ or may render a person liable to suit by the repeal of a statute under which he was exempt.³⁷⁹

While the legislature cannot declare that certain facts shall constitute a defense to a cause of action on a previously existing contract,³⁸⁰ nor deprive a party of a substantial defense the right to which has become vested,³⁸¹ yet where the right to avoid a contract is merely technical and the defense involves no substantial equities the legislature may abrogate it.³⁸² So

³⁷² *Lycoming County v. Union County*, 15 Pa. St. 166, 53 Am. Dec. 575.

³⁷³ *Ewell v. Daggs*, 108 U. S. 143, 2 S. Ct. 408, 27 L. ed. 682; *Mechanics' etc. Savings Bank v. Allen*, 28 Conn. 97; *Welch v. Wadsworth*, 30 Conn. 149, 79 Am. Dec. 236; *Hinman v. Goodyear*, 56 Conn. 210, 14 Atl. 804.

³⁷⁴ *Stein v. Indianapolis etc. Assn.*, 18 Ind. 237, 81 Am. Dec. 353.

³⁷⁵ *White v. Wilkins*, 24 Me. 299.

³⁷⁶ *Stokes v. Rodman*, 5 R. I. 405.

³⁷⁷ *Hepburn v. Curts*, 7 Watts, 300, 32 Am. Dec. 760.

³⁷⁸ *Hinkle v. Riffert*, 6 Pa. St. 196.

³⁷⁹ *Stokes v. Rodman*, 5 R. I. 405.

³⁸⁰ *Cornell v. Hichens*, 11 Wis. 353; *Hubbard v. Brainerd*, 35 Conn. 563; *Craig v. Fowler*, 59 Iowa, 200, 13 N. W. 116; *State v. Williams*, 10 Tex. Civ. App. 346, 30 S. W. 477.

³⁸¹ *Maguiar v. Henry*, 84 Ky. 1; *Wieland v. Shillock*, 24 Minn. 345; *Williar v. Baltimore Butchers' etc. Assn.*, 45 Md. 546.

³⁸² *Gibson v. Hibbard*, 13 Mich. 314; *Hoppack v. Stone*, 49 Barb. 524; *First School Dist. of Stratford v. Ufford*, 52 Conn. 44; *Baker v. Herndon*, 17 Ga. 568; *Christian v. Bowman*, 49 Minn. 99, 51 N. W.

a statute rendering a certain illegality of consideration no defense is valid as to prior contracts;³⁸³ e. g., a statute repealing usury laws and thus abrogating the defense of usury,³⁸⁴ or validating unauthorized acts of corporations and so doing away with the plea of *ultra vires*.³⁸⁵

The legislature may grant new trials and create new tribunals of review in order to detect fraudulent grants or reverse fraudulent judgments,³⁸⁶ or may grant the right to appeal, or allow appeal without security for costs or permit one of several parties to appeal,³⁸⁷ or may take away the right of appeal,³⁸⁸ or provide for appeals to different courts of review,³⁸⁹ or authorize the filing of a bill of review,³⁹⁰ and a law affecting judgments not yet rendered on contracts is valid.³⁹¹ A statute declaring a judgment absolutely void and authorizing a new trial is unconstitutional.³⁹² A statute may provide that no *scire facias* shall issue to revive a dormant judgment,³⁹³ or

663; *Bank of Missouri v. Snelling*, 35 Mo. 190; *Sparks v. Clapper*, 30 Ind. 204.

³⁸³ *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed. 458; *Hill v. Smith*, 1 Morris, 70.

³⁸⁴ *Ewell v. Daggs*, 108 U. S. 151, 2 S. Ct. 408, 27 L. ed. 682; *Mechanics' etc. Savings Bank v. Allen*, 28 Conn. 97; *Welch v. Wadsworth*, 30 Conn. 149, 79 Am. Dec. 239; *Andrews v. Russell*, 7 Black². 474; *Wilson v. Hardesty*, 1 Md. Ch. 66; *Baughner v. Nelson*, 9 Gill, 293, 52 Am. Dec. 694; *Town of Danville v. Pace*, 25 Gratt. 1, 18 Am. Rep. 663.

³⁸⁵ *Gross v. United States Mortgage Co.*, 108 U. S. 489, 2 S. Ct. 947, 27 L. ed. 795; *Butler v. United States etc. Assn.*, 97 Tenn. 686, 37 S. W. 386; *Mutual etc. Ins. Co. v. Winne*, 20 Mont. 39, 44 Pac. 449.

³⁸⁶ *League v. De Young*, 11 How. 202, 13 L. ed. 657.

³⁸⁷ *Todd v. Neal*, 49 Ala. 266; *Wilder v. Lumpkin*, 4 Ga. 208; *Converse v. Burrows*, 2 Minn. 229; *Davis v. Ballard*, 1 J. J. Marsh. 563; *Bradlee v. Brownsfield*, 2 Watts & S. 271.

³⁸⁸ *Grover v. Coon*, 1 N. Y. 536.

³⁸⁹ *Stephens v. Cherokee Nation*, 174 U. S. 485, 19 S. Ct. 722, 43 L. ed. 1041.

³⁹⁰ *Lampeyreac v. United States*, 7 Pet. 222, 8 L. ed. 665; *Ex parte Norton*, 44 Ala. 184.

³⁹¹ *Sprott v. Reid*, 3 G. Greene, 463.

³⁹² *Weaver v. Lapsley*, 43 Ala. 224.

³⁹³ *Parker v. Shannonhouse*, Phill. (N. C.) 209.

may change the law of costs as to pending judgments,³⁹⁴ or may reduce costs below the previously legal amount or deny them altogether.³⁹⁵ But a right to costs already vested cannot be taken away.³⁹⁶

A statute may require a creditor to exhaust his securities before bringing suit on his claim,³⁹⁷ or may require that a holder of a certificate of purchase give notice to occupants of land of his intent to apply for a deed a certain time before application.³⁹⁸ Where at the time coupons of state bonds were issued there was a remedy by mandamus to compel a tax collector to take such coupons in payment of taxes, but there was nothing to prevent collection pending the mandamus suit, a new law requiring payment under protest does not impair the obligation of the bonds.³⁹⁹ The legislature cannot, however, require, as a condition precedent to a suit on a debt, that the plaintiff show that the debt was returned for taxes, and that taxes due thereon were paid; such an act impairs the obligation of existing contracts.⁴⁰⁰ Nor can a suitor be required to take a test-oath of loyalty as to past occurrences before being allowed to sue on his claim.⁴⁰¹

Statutes prescribing the names in which suits shall be brought may retroact; such statutes relate only to the remedies provided for the enforcement of contracts and not to the obligation.⁴⁰² So a statute may provide that suits must be brought in the name of the real party in interest,⁴⁰³ or may

³⁹⁴ *Taylor v. Keeler*, 30 Conn. 324.

³⁹⁵ *Free v. Howorth*, 19 Ind. 404; *Potter v. Sturdevant*, 4 Me. 154; *Rader v. S. R. Dist.*, 36 N. J. L. 273.

³⁹⁶ *State v. Auditor*, 33 Miss. 287.

³⁹⁷ *Swift v. Fletcher*, 6 Minn. 550.

³⁹⁸ *Curtis v. Whitney*, 13 Wall. 71, 20 L. ed. 513; *Coulter v. Stafford*, 56 Fed. 566; *Oullahan v. Sweeny*, 79 Cal. 539, 12 Am. St. Rep. 173, 21 Pac. 961; *Herrick v. Niesz*, 16 Wash. 78, 47 Pac. 415.

³⁹⁹ *Antoni v. Greenhow*, 107 U. S. 780, 2 S. Ct. 91, 27 L. ed. 468.

⁴⁰⁰ *Lathrop v. Brown*, 1 Woods, 474, Fed. Cas. No. 8108; *Mitchell v. Cothrane*, 49 Ga. 125; *Kimbro v. Bank of Fulton*, 49 Ga. 419. But see *Garrett v. Cordell*, 43 Ga. 366; *Walker v. Whitehead*, 43 Ga. 538.

⁴⁰¹ *Pierce v. Carskadon*, 16 Wall. 239, 21 L. ed. 276.

⁴⁰² *Tompkins v. Forrestal*, 54 Minn. 119, 55 N. W. 813.

⁴⁰³ *Hancock v. Ritchie*, 11 Ind. 43.

allow the holder of a detached coupon to sue thereon in his own name,⁴⁰⁴ or may authorize the grantee of a rent charge to sue in his own name,⁴⁰⁵ or allow an administrator de bonis non to sue in the name of the state on the bond of his predecessor,⁴⁰⁶ or may authorize the holder of a note to sue in his own name on a guaranty of collection indorsed on it.⁴⁰⁷ An act authorizing the executors of a deceased person to revive a judgment obtained by another in the same manner as if they were the latter's executors impairs the obligation of contracts and is void.⁴⁰⁸ A statute requiring makers and indorsers of promissory notes to be sued in joint actions does not impair the obligation of any contract,⁴⁰⁹ nor does a statute allowing a purchaser who has obtained a deed to sue in his own name for the recovery of the land.⁴¹⁰ So a purchaser may recover money paid for taxes and costs.⁴¹¹ A statute directing that promissory notes given to a cashier may be sued and collected on in the name of the bank is valid as to notes previously given,⁴¹² and an act giving the right to sue one joint promisor alone does not affect the right but merely the remedy.⁴¹³ A statute authorizing assignees of non-negotiable notes to sue in their own names embraces notes assigned previously, but it cannot cut off any defense which may have been made in the payee's names.⁴¹⁴

An administrator may be authorized to apply to the court for the sale of an intestate's real estate to pay his debts,⁴¹⁵ or a guardian may be empowered to sell real estate and invest

⁴⁰⁴ *Augusta Bank v. Augusta*, 49 Me. 507.

⁴⁰⁵ *Van Rensselaer v. Hays*, 19 N. Y. 68, 75 Am. Dec. 278.

⁴⁰⁶ *Graham v. State*, 7 Ind. 470.

⁴⁰⁷ *Waldron v. Harring*, 28 Mich. 493.

⁴⁰⁸ *Tate v. Bell*, 4 Yerg. 202, 26 Am. Dec. 221.

⁴⁰⁹ *McMillan v. Sprague*, 4 How. (Miss.) 647, 35 Am. Dec. 412.

⁴¹⁰ *Justice v. Eddings*, 75 N. C. 581.

⁴¹¹ *Smith v. Merchand*, 7 Serg. & R. 260, 10 Am. Dec. 465.

⁴¹² *Crawford v. Branch Bank of Mobile*, 7 How. 279, 12 L. ed. 700.

⁴¹³ *Polyart v. Goulding*, Fed. Cas. No. 10,701, 1 Brun. Col. Cas. 2.

⁴¹⁴ *Harlan v. Sigler*, 1 Morr. 39.

⁴¹⁵ *Florentine v. Barton*, 2 Wall. 210, 17 L. ed. 783. And see *Brenham v. Story*, 39 Cal. 179; *Rosier v. Fagan*, 46 Ill. 404.

the proceeds in other securities.⁴¹⁶ The legislature may authorize the discharge of a testamentary trustee upon his own request and the appointment of his successor without impairing any contract obligations.⁴¹⁷

— Laws Regulating Procedure.

Laws regulating procedure and practice in the courts are also valid if they operate only on the remedy, and the forms and system of courts and proceedings may be changed at the will of the legislature.⁴¹⁸ So the state may create, alter, or abolish courts and change their sessions.⁴¹⁹

The delay in enforcing claims resulting from the abolishment of certain courts relates only to the remedy and does not impair any contract obligations.⁴²⁰ But a change which operates to deprive a creditor of all legal remedy for the en-

⁴¹⁶ *Lobrano v. Milligan*, 9 Wall. 295, 19 L. ed. 694.

⁴¹⁷ *Williamson v. Suydam*, 6 Wall. 738, 18 L. ed. 967.

⁴¹⁸ *Ogden v. Saunders*, 12 Wheat. 349, 6 L. ed. 606; *Livingston v. Moore*, 7 Pet. 469, 8 L. ed. 751; *Terry v. Anderson*, 95 U. S. 633, 24 L. ed. 385; *Hill v. Insurance Co.*, 134 U. S. 527, 10 S. Ct. 592, 33 L. ed. 994; *Rathbone v. Bradford*, 1 Ala. 312; *Grubbs v. Harris*, 1 Bibb, 567; *Cutts v. Hardee*, 38 Ga. 356; *Stoddard v. Smith*, 5 Binn. 355; *Smith v. Bryan*, 34 Ill. 264; *Burbank v. Rumsey*, 90 Ill. 555; *Maynes v. Moore*, 16 Ind. 116; *Hopkins v. Jones*, 22 Ind. 310; *Webb v. Moore*, 25 Ind. 4; *Williams v. Haines*, 27 Iowa, 254, 1 Am. Rep. 270; *Citizens' Bank v. Deynoot*, 25 La. Ann. 628; *Wheat v. State, Minor*, 199; *Vanzandt v. Waddell*, 2 Yerg. 260; *Miller v. Smith*, 16 Wend. 441.

⁴¹⁹ *Warren Mfg. Co. v. Etna Ins. Co.*, 2 Paine, 501, Fed. Cas. No. 17,206; *Rathbone v. Bradford*, 1 Ala. 312; *Ex parte Pollard*, 40 Ala. 77; *Woods v. Buie*, 5 How. (Miss.) 285; *Newkirk v. Chapron*, 17 Ill. 344; *Lapsley v. Brashears*, 4 Litt. 47; *Johnson v. Duncan*, 3 Mart. 531, 6 Am. Dec. 675; *Johnson v. Higgins*, 3 Met. (Ky.) 566; *Morse v. Goold*, 11 N. Y. 281; *Scott v. Smart*, 1 Mich. 295; *State v. Barringer, Phill* (N. C.) 554; *State v. Slevin*, 16 Mo. App. 541; *Wood v. Wood*, 14 Rich. 148; *Hansrick v. Rouse*, 17 Ga. 56; *Horne v. State*, 84 N. C. 362; *McElrath v. Pittsburgh etc. Ry. Co.*, 55 Pa. St. 189; *Mexican National Ry. Co. v. Musette*, 86 Tex. 708, 26 S. W. 1075, 24 L. R. A. 642.

⁴²⁰ *Newkirk v. Chapron*, 17 Ill. 344; *Johnson v. Higgins*, 3 Met. (Ky.) 566.

forcement of his contract is void;⁴²¹ e. g., a constitutional provision taking from all the courts jurisdiction to enforce contracts based upon considerations previously valid.⁴²² The legislature may reduce the number of courts and thus incidentally postpone the remedy.⁴²³ Laws creating new tribunals of review and giving new rights of appeal in certain cases have been upheld.⁴²⁴ Laws prescribing the venue in certain classes of actions relate only to the remedy upon previously executed contracts,⁴²⁵ and alterations in the law relating to changes of venue are not repugnant to the obligation clause.⁴²⁶ An act confirming proceedings previously open to question is likewise unobjectionable.⁴²⁷

The legislature may regulate the time and mode of trial of causes of action on contracts previously executed,⁴²⁸ or change the manner of commencing actions, serving notices and process.⁴²⁹ An act prohibiting waiver of process and confession of judgment by attorneys relates only to remedies and does not impair the obligation of contracts executed prior to its passage.⁴³⁰ A statute may extend the time for taking a default

⁴²¹ *Jacobs v. Smallwood*, 63 N. C. 112; *Johnson v. Winslow*, 64 N. C. 27.

⁴²² *French v. Tumlin*, Fed. Cas. No. 5104.

⁴²³ *Parker v. Sanders*, 46 Ark. 235; *Newkirk v. Chapron*, 17 Ill. 348.

⁴²⁴ *League v. De Young*, 11 How. 202, 13 L. ed. 657; *Long's Appeal*, 87 Pa. St. 119; *Treasurer v. Wygall*, 46 Tex. 462.

⁴²⁵ *Sanders v. Hillsborough Ins. Co.*, 44 N. H. 328.

⁴²⁶ *Long's Appeal*, 87 Pa. St. 119; *Treasurer v. Wygall*, 46 Tex. 462.

⁴²⁷ *Kearny v. Taylor*, 15 How. 517, 14 L. ed. 787; *Goshen v. Stonington*, 4 Conn. 310, 10 Am. Dec. 121; *Thornton v. McGrath*, 1 Duvall, 349; *Davis v. State Bank*, 7 Ind. 316; *Underwood v. Lilly*, 10 Serg. & R. 97.

⁴²⁸ *Woods v. Buie*, 5 How. (Miss.) 285; *Ex parte Pollard*, 40 Ala. 77; *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283.

⁴²⁹ *Railroad Co. v. Hecht*, 95 U. S. 170, 24 L. ed. 423; *McCreary v. State*, 27 Ark. 425; *New Albany etc. R. R. Co. v. McNamara*, 11 Ind. 543; *United Companies v. Weldon*, 47 N. J. L. 63, 54 Am. Rep. 116; *Holgate v. Oregon etc. R. R.*, 16 Or. 124, 17 Pac. 680.

⁴³⁰ *Worsham v. Stevens*, 66 Tex. 89, 17 S. W. 404.

judgment.⁴³¹ But a statute extending the time for the prosecution of an action cannot operate to revive a cause of action already barred.⁴³²

The legislature may change or modify the rules as to evidence receivable in the state courts, and if the remedy for the enforcement of an existing contract is thereby affected, its obligation is not necessarily impaired.⁴³³ A law establishing a rule of evidence respecting past transactions cannot be said to impair contract obligations.⁴³⁴ But a statute which so changes the rules of evidence as to render the enforcement of a contract impossible does impair its obligation and is unconstitutional.⁴³⁵ So also as to a statute which makes certain evidence conclusive of the fact of indebtedness, thus depriving the defendant of a defense which was legal when the contract was made.⁴³⁶ The legislature cannot cut off or destroy the rights of a bona fide holder of commercial paper by changing the rules of pleading or evidence.⁴³⁷ An act making a collector's report in an application for execution against land for unpaid taxes prima facie evidence of the regularity of the assessment is valid,⁴³⁸ as also is an act making the report of an auditor prima facie evidence of the facts stated therein.⁴³⁹ A statute changing the presumption arising from a tax deed is

⁴³¹ *Von Baumbach v. Bade*, 9 Wis. 559, 76 Am. Dec. 283; *Holloway v. Sherman*, 12 Iowa, 282, 79 Am. Dec. 537.

⁴³² *State v. Sneed*, 25 Tex. Supp. 66.

⁴³³ *Ogden v. Saunders*, 12 Wheat. 349, 6 L. ed. 606; *Scheible v. Bachs*, 41 Ala. 423; *Tarleton v. Southern Bank*, 41 Ala. 722; *Kirtland v. Molton*, 41 Ala. 548; *Herbert v. Easton*, 43 Ala. 547; *Slaughter v. Culpepper*, 35 Ga. 26; *Cutts v. Hardee*, 38 Ga. 356; *Roby v. Chicago*, 64 Ill. 447; *Falls v. Wadsworth*, 23 Me. 553; *Oriental Bank v. Freese*, 18 Me. 112; *Holmes v. Hunt*, 122 Mass. 516, 23 Am. Rep. 386; *Howard v. Moot*, 64 N. Y. 262; *People v. Mitchell*, 45 Barb. 208.

⁴³⁴ *Herbert v. Easton*, 43 Ala. 547; *Rich v. Flanders*, 39 N. H. 304; *Tabor v. Ward*, 83 N. C. 291.

⁴³⁵ *Marsh v. Burroughs*, 1 Woods, 463, Fed. Cas. No. 9112.

⁴³⁶ *Hope Mutual Ins. Co. v. Flynn*, 38 Mo. 483.

⁴³⁷ *Cornell v. Hichens*, 11 Wis. 353.

⁴³⁸ *Burbank v. Rumsey*, 90 Ill. 555.

⁴³⁹ *Holmes v. Hunt*, 122 Miss. 516, 23 Am. Rep. 386.

constitutional.⁴⁴⁰ A statute making a sheriff's deed prima facie evidence that the title of the judgment debtor passed to and vested in the grantee relates only to the remedy,⁴⁴¹ and a statute permitting certified copies of sheriff's deeds, previously recorded, to be given in evidence to the same extent as the originals does not impair any obligation.⁴⁴² An act regulating proofs is valid.⁴⁴³ So the legislature may dispense with the necessity of proving the names of the individual members of a firm,⁴⁴⁴ or of the proving the signature to a written instrument.⁴⁴⁵ An act abolishing the distinction between sealed and unsealed instruments is likewise unobjectionable.⁴⁴⁶ The legislature may pass new laws calculated to facilitate the means of ascertaining what a contract really was,⁴⁴⁷ or may permit inquiry into the consideration of a sealed instrument executed in another state;⁴⁴⁸ but a statute which requires proof of consideration upon a plea under oath that it has been used for illegal purposes is void.⁴⁴⁹ A statute dispensing with the necessity for proof of demand in replevin suits may apply to pending suits.⁴⁵⁰ The removal of the disqualification of witnesses on the ground of interest goes only to the remedy on existing contracts,⁴⁵¹ and a statute may make a party to a previously executed contract a competent witness in his own behalf.⁴⁵² So also a statute imposing disqualifications upon certain classes of witnesses is valid.⁴⁵³

⁴⁴⁰ *Hickox v. Tallman*, 38 Barb. 608; *Roby v. City*, 64 Ill. 447; *Smith v. Cleveland*, 17 Wis. 556; *Lain v. Snepardson*, 18 Wis. 59.

⁴⁴¹ *Ehle v. Brown*, 31 Wis. 405.

⁴⁴² *Foster v. Gray*, 22 Pa. St. 9.

⁴⁴³ *Wood v. New York*, 6 Robt. 463.

⁴⁴⁴ *Ballard v. Ridgley*, Morr. 27.

⁴⁴⁵ *Ingraham v. Dooley*, Morr. 28.

⁴⁴⁶ *Williams v. Haines*, 27 Iowa, 254, 1 Am. Rep. 270.

⁴⁴⁷ *Woodfin v. Slader*, Phill. (N. C.) 200.

⁴⁴⁸ *Williams v. Haines*, 27 Iowa, 254, 1 Am. Rep. 270.

⁴⁴⁹ *Marsh v. Burroughs*, 1 Woods, 463, Fed. Cas. No. 9112. And see *Edwards v. Dixon*, 53 Ga. 334.

⁴⁵⁰ *Stockwell v. Robinson*, 9 Houst. 313, 32 Atl. 528.

⁴⁵¹ *Rich v. Flanders*, 39 N. H. 323.

⁴⁵² *Ralston v. Lothian*, 18 Ind. 303; *Neass v. Mercer*, 15 Barb. 318; *Walthall v. Walthall*, 42 Ala. 450; *Wormley v. Hamburg*, 40 Iowa, 22.

⁴⁵³ *O'Bryan v. Allen*, 108 Mo. 227, 18 S. W. 892.

A law allowing the jury to determine the value of a contract in suit independently of the stipulations of the parties is unconstitutional;⁴⁵⁴ but the legislature may provide that either party may give in evidence the consideration, its value, the intent of the parties as to its payment, and may direct that the verdict and judgment be based upon principles of equity.⁴⁵⁵ A retrospective statute which provides that no verdict shall be rendered unless a contract has been legally returned for taxes is unconstitutional.⁴⁵⁶

A law merely regulating the mode of issuing executions on judgments previously rendered affects only the remedy, and is constitutional.⁴⁵⁷ So an act confirming irregular levies is valid,⁴⁵⁸ and this is true of a law providing for the vacation of irregular levies and the correction of errors within a certain time.⁴⁵⁹ So also the repeal of a law authorizing executory process on foreign judgments is valid although applied to process issued before the repeal.⁴⁶⁰

Police Regulations as Affecting Obligation.

All contracts are inherently subject to the paramount power of the sovereign, the exercise of which is never understood to involve their violation within the meaning of the obligation

⁴⁵⁴ *Wilmington etc. R. R. Co. v. King*, 91 U. S. 5, 23 L. ed. 186; *Effinger v. Kenny*, 115 U. S. 571, 6 S. Ct. 182, 29 L. ed. 495; *Palmer v. Love*, 82 N. C. 479; *Leach v. Smith*, 25 Ark. 246; *Woodruff v. Tilly*, 25 Ark. 309.

⁴⁵⁵ *Slaughter v. Culpepper*, 35 Ga. 25; *Cutts v. Hardee*, 38 Ga. 350; *Taylor v. Flint*, 35 Ga. 124; *Kirtland v. Molton*, 41 Ala. 543; *Tarleton v. Southern Bank*, 41 Ala. 722; *Herbert v. Easton*, 43 Ala. 547; *Rutland v. Copes*, 15 Rich. 84.

⁴⁵⁶ *Lathrop v. Brown*, 1 Woods, 474, Fed. Cas. No. 8108; *Walker v. Whitehead*, 16 Wall. 314, 21 L. ed. 357; *Gardner v. Jeter*, 49 Ga. 195; *Griffiths v. Shipp*, 49 Ga. 231; *Kimbrow v. Bank*, 49 Ga. 419; *Dougherty v. Fogle*, 50 Ga. 464.

⁴⁵⁷ *Bank of United States v. Longworth*, 1 McLean, 35; *Williams v. Waldo*, 4 Ill. 264; *Delahay v. McConnell*, 5 Ill. 156; *Coriell v. Ham*, 4 G. Greene, 455, 61 Am. Dec. 134; *Carnes v. Red River Parish*, 29 La. Ann. 608.

⁴⁵⁸ *Mather v. Chapman*, 6 Conn. 54.

⁴⁵⁹ *Bell v. Roberts*, 13 Vt. 582; *Pratt v. Jones*, 25 Vt. 303.

⁴⁶⁰ *Scott v. Duke*, 3 La. Ann. 253.

clause of the constitution; the power acts upon property, not upon contract.⁴⁶¹ Neither the legislature nor the people themselves can bargain away the power to regulate the public health and morals,⁴⁶² or legislative discretion concerning such regulation,⁴⁶³ and the power is inalienable even by express grant.⁴⁶⁴ So one legislature cannot by contract restrain the power of a subsequent legislature to legislate for the public welfare, and to that end to suppress any and all practices tending to corrupt the public morals or impair the public health.⁴⁶⁵ The legislative power extends only to irrevocable grants of property and franchises which do not impair this sovereign right of police regulation,⁴⁶⁶ but while this power cannot be abdicated, it may in some instances be delegated, subject always to the power of revocation.⁴⁶⁷

The police power comprehends all those general laws of internal regulation necessary to secure peace, good order, health, and the comfort of society,⁴⁶⁸ private interests being subser-

⁴⁶¹ *Osborn v. Nicholson*, 13 Wall. 660, 20 L. ed. 689; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 672, 6 S. Ct. 252, 29 L. ed. 516; *New Orleans Waterworks v. Rivers*, 115 U. S. 681, 6 S. Ct. 273, 29 L. ed. 525.

⁴⁶² *Boston Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 650, 6 S. Ct. 252, 29 L. ed. 516; *Birmingham Mineral etc. Co. v. Parsons*, 100 Ala. 662, 46 Am. St. Rep. 92, 13 South. 662, 27 L. R. A. 263; *Chicago etc. Ry. Co. v. State*, 47 Neb. 549, 66 N. W. 624, 41 L. R. A. 481; *Thorpe v. Rutland etc. Ry. Co.*, 27 Vt. 140, 62 Am. Dec. 625.

⁴⁶³ *Stone v. Mississippi*, 101 U. S. 819, 25 L. ed. 1079; *Boyd v. Alabama*, 94 U. S. 645, 24 L. ed. 302; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 751, 4 S. Ct. 652, 28 L. ed. 585.

⁴⁶⁴ *Boston Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989; *New York etc. R. R. Co. v. Bristol*, 151 U. S. 567, 14 S. Ct. 437, 38 L. ed. 269; *Holden v. Hardy*, 169 U. S. 392, 18 S. Ct. 383, 42 L. ed. 780.

⁴⁶⁵ *Boyd v. Alabama*, 94 U. S. 650, 24 L. ed. 302; *Fertilizing Co. v. Hyde Park*, 97 U. S. 670, 24 L. ed. 1036.

⁴⁶⁶ *Stone v. Mississippi*, 101 U. S. 821, 25 L. ed. 1079.

⁴⁶⁷ *Illinois Cent. R. R. Co. v. Illinois*, 146 U. S. 453, 13 S. Ct. 110, 36 L. ed. 1018.

⁴⁶⁸ *Slaughter-house Cases*, 16 Wall. 62, 21 L. ed. 394; *Munn v. Illinois*, 94 U. S. 125, 24 L. ed. 77; *Boston Beer Co. v. Massachusetts*, 97 U. S. 33, 24 L. ed. 989; *Fertilizing Co. v. Hyde Park*, 97 U. S.

vient to the general interests of the community.⁴⁶⁹ The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority essential to the safety, health, peace, good order and morals of the community,⁴⁷⁰ and for the commonwealth individuals must suffer the destruction of property, and even of life, rights of necessity being part of the law.⁴⁷¹ The legislature may forbid a person to engage in a dangerous employment except at his own risk,⁴⁷² or it may prohibit a hazardous or pernicious business, although it thereby affects prior contracts.⁴⁷³ So also it may regulate the sale of naphtha or inflammable oils,⁴⁷⁴ and a subsequent statute may forbid the transportation of dead animals under a charter provision permitting their use in the manufacture of fertilizers.⁴⁷⁵ A statute prohibiting lotteries is valid although intended to operate on a lottery authorized by a corporate charter.⁴⁷⁶ The legislature may enact laws regulating the observance of the Sabbath,⁴⁷⁷ and may provide a remedy against nuisances.⁴⁷⁸

669, 24 L. ed. 1036; *Patterson v. Kentucky*, 97 U. S. 504, 24 L. ed. 1115; *Cotting v. Kansas City Stockyards Co.*, 183 U. S. 84, 22 S. Ct. 30, 46 L. ed. 92; *Ex parte Schrader*, 33 Cal. 279; *Philadelphia etc. R. Co. v. Bowers*, 4 Houst. 506; *New Orleans Gaslight Co. v. Hart*, 40 La. Ann. 474, 8 Am. St. Rep. 544, 4 South. 215.

⁴⁶⁹ *Slaughter-house Cases*, 16 Wall. 62, 21 L. ed. 394; *Commonwealth v. Alger*, 7 Cush. 53.

⁴⁷⁰ *Crowley v. Christensen*, 137 U. S. 89, 11 S. Ct. 13, 34 L. ed. 620.

⁴⁷¹ *Bowditch v. Boston*, 101 U. S. 18, 25 L. ed. 980.

⁴⁷² *Kirby v. Pennsylvania etc. R. R. Co.*, 76 Pa. St. 506.

⁴⁷³ *People v. Hawley*, 3 Mich. 330.

⁴⁷⁴ *United States v. Dewitt*, 9 Wall. 41; *Patterson v. Kentucky*, 97 U. S. 503, 24 L. ed. 1115, affirming 11 Bush, 315, 21 Am. Rep. 222.

⁴⁷⁵ *Fertilizing Co. v. Hyde Park*, 97 U. S. 669, 24 L. ed. 1036, affirming 70 Ill. 634.

⁴⁷⁶ *Phalen v. Virginia*, 8 How. 169, 12 L. B. A. 1030; *Boyd v. Alabama*, 94 U. S. 650, 24 L. ed. 302; *Stone v. Mississippi*, 101 U. S. 819, 25 L. ed. 1079; *Douglas v. Kentucky*, 168 U. S. 498, 18 S. Ct. 199, 42 L. ed. 553; *Moore v. State*, 48 Miss. 147, 12 Am. Rep. 367.

⁴⁷⁷ *People v. Havnor*, 149 N. Y. 195, 52 Am. St. Rep. 707, 43 N. E. 541, 31 L. R. A. 689; *Bohl v. State*, 3 Tex. App. 683; *People v. Bellet*, 99 Mich. 151, 41 Am. St. Rep. 589, 22 L. R. A. 286; *Vogel-song v. State*, 9 Ind. 112; *Shaver v. State*, 10 Ark. 259; *Specht v. Commonwealth*, 8 Pa. St. 312, 49 Am. Dec. 518.

⁴⁷⁸ *Fertilizing Co. v. Hyde Park*, 97 U. S. 669, 24 L. ed. 1036.

Every individual holds his property subject to such police regulation as the legislature in its wisdom may enact for the general welfare,⁴⁷⁹ and it is the province of the legislature to determine the exigency calling for the exercise of the police power, and of the courts to decide as to the proper subjects of its exercise.⁴⁸⁰ As to whether a purported police regulation is wise or reasonable the courts will not determine;⁴⁸¹ the legislature possesses a wide discretion in this respect.⁴⁸² The mere fact of pecuniary injury is not sufficient to warrant the holding of a police regulation invalid.⁴⁸³ A state may regulate the carrying on of business within its limits,⁴⁸⁴ and may impose reasonable police regulations for the protection of markets against the sale of commodities unfit for commerce,⁴⁸⁵ or may regulate the sale of any commodity the use of which would be detrimental to the morals of the people.⁴⁸⁶

The legislature may regulate or prohibit the sale of intoxicating liquors,⁴⁸⁷ and the regulation or prohibition may oper-

⁴⁷⁹ *Brown v. Keener*, 74 N. C. 714; *Pool v. Trexler*, 76 N. C. 297.

⁴⁸⁰ *Lawton v. Steele*, 152 U. S. 136, 14 S. Ct. 499, 38 L. ed. 385; *Allgeyer v. Louisiana*, 165 U. S. 590, 17 S. Ct. 427, 41 L. ed. 832; *Lake View v. Rose Hill Cemetery*, 70 Ill. 191, 22 Am. Rep. 71; *Daniels v. Hilgard*, 77 Ill. 640.

⁴⁸¹ *Railroad Co. v. Richmond*, 96 U. S. 528, 24 L. ed. 734; *Patterson v. Kentucky*, 97 U. S. 504, 24 L. ed. 1115.

⁴⁸² *Plessy v. Ferguson*, 163 U. S. 550, 16 S. Ct. 1138, 41 L. ed. 256.

⁴⁸³ *L'Hote v. New Orleans*, 177 U. S. 598, 20 S. Ct. 788, 44 L. ed. 899.

⁴⁸⁴ *Higgins v. Rinker*, 47 Tex. 381.

⁴⁸⁵ *State v. Fosdick*, 21 La. Ann. 256; *New Haven etc. Co. v. Bunnell*, 4 Conn. 59; *Fertilizing Co. v. Hyde Park*, 97 U. S. 669, 24 L. ed. 1036.

⁴⁸⁶ *State v. Gurney*, 37 Me. 156, 58 Am. Dec. 782.

⁴⁸⁷ *Pervear v. Commonwealth*, 5 Wall. 479, 18 L. ed. 608; *Bartomeyer v. Iowa*, 18 Wall. 132, 21 L. ed. 929; *Boston Beer Co. v. Massachusetts*, 97 U. S. 32, 24 L. ed. 989; *Eilenbecker v. Plymouth Co.*, 134 U. S. 40, 10 S. Ct. 424, 33 L. ed. 801; *Giozza v. Tiernan*, 148 U. S. 662, 13 S. Ct. 723, 37 L. ed. 599; *Jacobs Pharmacy Co. v. Atlanta*, 89 Fed. 246.

ate to revoke licenses already granted and not yet expired.⁴⁸⁸ So a state may tax the sale of intoxicating liquors.⁴⁸⁹ The fact that the federal government has granted a license to sell liquor does not authorize any violation of state laws nor preclude prohibition on the part of the state.⁴⁹⁰ A clause in the charter of an educational institution forbidding the sale of liquor within the neighborhood cannot be construed as a grant of a power or privilege, but as an exercise of the police power, and as such subject to repeal.⁴⁹¹ A statute prohibiting the sale or keeping for sale of liquors previously manufactured does not impair any contract obligations by reason of the fact that it lessens the value of liquors already owned.⁴⁹² There is no inherent right in a citizen to sell intoxicating liquors, nor is it a privilege of United States citizenship.⁴⁹³ Since the Wilson Act of 1890, subjecting imported liquors to the operation of the police regulations of the states, there can be no objection to a prohibitory law on the ground that it impairs the contract between a manufacturer and an importer.⁴⁹⁴

The reasonable regulation of a business or trade is within the police power of the states,⁴⁹⁵ and such regulation may extend to both the exercise and mode of exercise of the business or trade.⁴⁹⁶ So the regulation of the business of mining and the prescribing of certain precautions to secure the safety, health and comfort of laborers is a valid exercise of the

⁴⁸⁸ *Boston Beer Co. v. Massachusetts*, 97 U. S. 32, 24 L. ed. 989; *Kresser v. Lyman*, 74 Fed. 767; *Powell v. State*, 69 Ala. 10; *Hevren v. Reed*, 126 Cal. 222, 58 Pac. 537; *Moore v. Indianapolis*, 120 Ind. 492, 22 N. E. 427; *Young v. Blaisdell*, 138 Mass. 345.

⁴⁸⁹ *Gilman v. Philadelphia*, 3 Wall. 730, 18 L. ed. 96; *Sinclair v. State*, 69 N. C. 47.

⁴⁹⁰ *McGuire v. Commonwealth*, 3 Wall. 395, 18 L. ed. 164; *Territory v. O'Connor*, 5 Dak. 408, 41 N. W. 751; *Commonwealth v. Casey*, 12 Allen, 222; *State v. Elder*, 54 Me. 383; *State v. Lillard*, 78 Mo. 138.

⁴⁹¹ *Dingman v. People*, 51 Ill. 277.

⁴⁹² *State v. Paul*, 5 R. I. 185. And see *Mugler v. Kansas*, 123 U. S. 657, 8 S. Ct. 273, 31 L. ed. 205.

⁴⁹³ *Crowley v. Christensen*, 137 U. S. 91, 11 S. Ct. 13, 34 L. ed. 620.

⁴⁹⁴ *Catini v. Tillman*, 54 Fed. 969; *Minneapolis Brewing Co. v. McGillivray*, 10 Fed. 258.

⁴⁹⁵ *Soon Hing v. Crowley*, 113 U. S. 708, 5 S. Ct. 730, 28 L. ed. 1145.

⁴⁹⁶ *Gundling v. Chicago*, 177 U. S. 188, 20 S. Ct. 633, 44 L. ed. 725.

power;⁴⁹⁷ e. g., an act regulating the hours of labor in mines and smelters.⁴⁹⁸ The legislature may also prescribe the qualifications of professional graduates.⁴⁹⁹

In the use of its property and the transaction of its business a private corporation stands upon the same footing as an individual.⁵⁰⁰ Corporations are legislative creatures, with limited citizenship, and subject to legislation protecting public health and morality.⁵⁰¹ In granting corporate franchises a state reserves the right to enact police regulations for the protection of life and property.⁵⁰²

The imposition of duties and obligations in a corporate charter does not prevent the legislature from imposing further duties for the safety of persons and property,⁵⁰³ and statutory authority given to a corporation to engage in a particular private business detrimental to public health or morals does not constitute a contract preventing its withdrawal.⁵⁰⁴ Provisions for penalties and forfeitures in a charter are not mere matters of contract.⁵⁰⁵ When applied to corporations, however, the police power is subject to constitutional limitations,⁵⁰⁶

⁴⁹⁷ *St. Louis Con. Coal Co. v. Illinois*, 185 U. S. 207, 22 S. Ct. 616, 46 L. ed. 872; *Daniels v. Hilgard*, 77 Ill. 640; *Dingman v. People*, 51 Ill. 277.

⁴⁹⁸ *Holden v. Hardy*, 169 U. S. 395, 18 S. Ct. 383, 42 L. ed. 780.

⁴⁹⁹ *Regents v. Williams*, 9 Gill & J. 365, 31 Am. Dec. 72; *State v. Heyward*, 3 Rich. 389; *Logan v. State*, 5 Tex. App. 306.

⁵⁰⁰ *Richmond etc. R. R. Co. v. Richmond*, 26 Gratt. 83.

⁵⁰¹ *Stone v. Mississippi*, 101 U. S. 820, 25 L. ed. 1079.

⁵⁰² *Sloan v. Pacific R. R. Co.*, 61 Mo. 24, 21 Am. Rep. 397; *Benson v. New York*, 10 Barb. 223; *Lake Shore etc. R. R. Co. v. Cincinnati etc. R. R. Co.*, 30 Ohio St. 604; *Galena etc. R. R. Co. v. Loomis*, 13 Ill. 548, 56 Am. Dec. 471; *Platte etc. Co. v. Dowell*, 17 Colo. 376, 30 Pac. 68.

⁵⁰³ *Minneapolis etc. R. R. Co. v. Emmons*, 149 U. S. 368, 13 S. Ct. 870, 37 L. ed. 769; *Kilpatrick v. Grand Trunk Ry. Co.*, 74 Vt. 288, 93 Am. St. Rep. 887, 52 Atl. 531.

⁵⁰⁴ *New Orleans Gaslight Co. v. Louisiana Light Co.*, 115 U. S. 669, 6 S. Ct. 252, 29 L. ed. 516.

⁵⁰⁵ *Maryland v. Baltimore etc. R. R. Co.*, 3 How. 552, 11 L. ed. 714.

⁵⁰⁶ *Lake View v. Rose Hill Cemetery*, 70 Ill. 191, 22 Am. Rep.

and to be valid they must be in fact regulations calculated to preserve the public health, morals or safety.⁵⁰⁷

Congress cannot interfere with the power of the states to enact police regulations, nor legislate on the internal police of the states.⁵⁰⁸

71; *State v. Fosdick*, 21 La. Ann. 256; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 558, 22 S. Ct. 431, 46 L. ed. 679.

⁵⁰⁷ *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 669, 6 S. Ct. 252, 29 L. ed. 516; *Gulf etc. Ry. Co. v. Ellis*, 165 U. S. 158, 17 S. Ct. 255, 41 L. ed. 666.

⁵⁰⁸ *Gibbons v. Ogden*, 9 Wheat. 204-209, 6 L. ed. 23; *United States v. Dewitt*, 9 Wall. 44, 19 L. ed. 593; *Slaughter-house Cases*, 16 Wall. 63, 21 L. ed. 394; *Railroad Co. v. Fuller*, 17 Wall. 560, 21 L. ed. 710; *United States v. Boyer*, 85 Fed. 434; *Patterson v. Kentucky*, 97 U. S. 504, 24 L. ed. 1115, affirming 11 Bush, 315, 21 Am. Rep. 222; *Western Union Tel. Co. v. Pendleton*, 95 Ind. 16, 48 Am. Rep. 696; *Phelps v. Racey*, 60 N. Y. 15, 19 Am. Rep. 144.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Imports and Exports.

"Imports," within the constitutional prohibition upon the states against taxing imports, means goods from a foreign country.¹ The prohibition does not embrace goods brought from other states, and a tax upon such goods is not invalidated by this clause.² The term "imports" being applied to articles brought from foreign countries, e converso the term "exports" is applicable, under this clause, only to goods sent to foreign countries.³

When an importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has lost its distinctive character

¹ *Brown v. Maryland*, 12 Wheat. 437, 6 L. ed. 678; *License Cases*, 5 How. 594, 12 L. ed. 256; *Woodruff v. Parham*, 8 Wall. 131, 19 L. ed. 382; *Hinson v. Lott*, 8 Wall. 148, 19 L. ed. 387; *Case of State Freight Tax*, 15 Wall. 232, 21 L. ed. 146; *Guy v. Baltimore*, 100 U. S. 434, 25 L. ed. 743; *Brown v. Houston*, 114 U. S. 628, 5 S. Ct. 1094, 29 L. ed. 257, affirming 33 La. Ann. 845, 39 Am. Rep. 286; *Pittsburgh Coal Co. v. Bates*, 156 U. S. 587, 15 S. Ct. 415, 39 L. ed. 538; *Pittsburgh etc. Coal Co. v. Louisiana*, 156 U. S. 600, 15 S. Ct. 459, 39 L. ed. 544; *In re Rudolph*, 6 Saw. 295, 2 Fed. 65; *State v. Pinckney*, 10 Rich. 471; *State v. Charleston*, 10 Rich. 240; *Harrison v. Mayor*, 3 Smedes & M. 581, 41 Am. Dec. 633; *People v. Walling*, 53 Mich. 270, 18 N. W. 811; *Board v. Pleasants*, 23 La. Ann. 349.

² *Woodruff v. Parham*, 8 Wall. 140, 19 L. ed. 382; *Hinson v. Lott*, 8 Wall. 148, 19 L. ed. 387; *People v. Walling*, 53 Mich. 270, 18 N. W. 811.

³ *Patapsco Guano Co. v. North Carolina*, 171 U. S. 350, 18 S. Ct. 862, 43 L. ed. 191; *Dooley v. United States*, 182 U. S. 222, 22 S. Ct. 64, 45 L. ed. 1074; *Clarke v. Clarke*, 3 Woods, 410, Fed. Cas. No. 2846; *Nelson v. Loraine*, 22 Fed. 57.

as an import;⁴ but so long as goods remain the property of the importer in the original form or package in which imported a tax upon them is a duty upon imports, and so unconstitutional.⁵ Goods in the lower harbor of Mobile, bought so as to remain at the risk of the vendor and being entered and the duty secured before transshipment, are imported before purchase, and a tax upon the purchaser is not a tax on imports;⁶ but a statute taxing imports as imports on their way to become incorporated with the general mass of property is unconstitutional.⁷ So with exports; goods collected at the entrepot are not yet exports nor in process of exportation; exportation does not begin until goods are committed to a carrier for transportation or have started on their ultimate passage to their destination.⁸

A general state tax on all property alike does not become a duty on exports because some of the property is thereafter ex-

⁴ *Brown v. Maryland*, 12 Wheat. 441, 6 L. ed. 678; *License Cases*, 5 How. 589, 12 L. ed. 256; *State Tax on Railway Gross Receipts*, 15 Wall. 295, 21 L. ed. 146; *Low v. Austin*, 13 Wall. 33, 20 L. ed. 517; *Brown v. Houston*, 114 U. S. 634, 5 S. Ct. 1094, 29 L. ed. 257; *May v. New Orleans*, 178 U. S. 507, 20 S. Ct. 976, 44 L. ed. 1165; *Ex parte Brown*, 48 Fed. 436; *United States v. Hopkins*, 82 Fed. 541; *Padgett v. Savannah*, 14 Ga. 442; *City of South Bend v. Martin*, 142 Ind. 42, 41 N. E. 318, 29 L. R. A. 531; *McGregor v. Cone*, 104 Iowa, 469, 65 Am. St. Rep. 525, 73 N. W. 1043, 39 L. R. A. 484; *Myers v. Baltimore County*, 83 Md. 389, 55 Am. St. Rep. 352, 35 Atl. 145, 34 L. R. A. 309; *Harrison v. Mayor*, 3 Smedes & M. 586, 41 Am. Dec. 635; *Territory v. Farnsworth*, 5 Mont. 317, 5 Pac. 874; *Ex parte Asher*, 23 Tex. App. 674, 5 S. W. 97.

⁵ *Brown v. Maryland*, 12 Wheat. 442, 6 L. ed. 678; *Low v. Austin*, 13 Wall. 34, 20 L. ed. 517; *Coe v. Errol*, 110 U. S. 527, 6 S. Ct. 475, 29 L. ed. 715; *May v. New Orleans*, 178 U. S. 507, 20 S. Ct. 976, 44 L. ed. 1165; *Austin v. Tennessee*, 179 U. S. 355, 21 S. Ct. 132, 45 L. ed. 224; *Leisy v. Hardin*, 135 U. S. 108, 10 S. Ct. 683, 34 L. ed. 128; *Tuchman v. Welch*, 42 Fed. 555; *Wynn v. Wright*, 4 Dev. & B. 13; *State v. Charleston*, 10 Rich. 240; *State v. Shapleigh*, 27 Mo. 464; *State ex rel. v. Assessors*, 46 La. Ann. 146, 49 Am. St. Rep. 319, 15 South. 11; *State v. Burns*, 82 Md. 568, 19 Atl. 914; *State v. Pratt*, 50 Vt. 592, 9 Atl. 558.

⁶ *Waring v. Mayor*, 8 Wall. 118, 19 L. ed. 342.

⁷ *Emert v. Missouri*, 156 U. S. 313, 15 S. Ct. 367, 39 L. ed. 430.

⁸ *Coe v. Errol*, 116 U. S. 525, 6 S. Ct. 475, 29 L. ed. 715.

ported; hence a tax upon coal on towboats offered for sale generally does not become an export tax by reason of the fact that it is bought for export.⁹ Nor can the mere intention to export goods exempt them from a state tax.¹⁰ Capital which is in money on the day of assessment, although used in exporting goods from the United States, is taxable by a state, and a tax thereon is in no sense a tax on exports.¹¹ But goods already inspected under a state law and delivered for export are exports, and not taxable.¹²

The terms "imports," "exports" and "inspection laws," as here used, have exclusive reference to property and not to persons.¹³ So a tax on every person leaving a state by means of a common carrier, however invalid on other grounds, cannot be declared void as a tax on exports.¹⁴ On the other hand, a tax on foreign immigrants cannot be upheld as an inspection charge authorized by this clause, and such a tax is void.¹⁵ A corpse is not property, hence a charge for the removal of dead bodies is not an export tax.¹⁶ A state law imposing a transit duty for persons or goods transported in the state is not a tax on imports or exports.¹⁷

Porto Rico and the United States were foreign countries with respect to each other while the island was occupied by the United States military forces before cession to the United States by treaty.¹⁸

⁹ *Brown v. Houston*, 114 U. S. 629, 630, 5 S. Ct. 1094, 29 L. ed. 257.

¹⁰ *Nelson v. Loraine*, 22 Fed. 57.

¹¹ *People v. Commissioners*, 104 U. S. 468, 26 L. ed. 632.

¹² *Clarke v. Clarke*, 3 Woods, 410.

¹³ *People v. Compagnie Generale etc.*, 107 U. S. 61, 2 S. Ct. 87, 27 L. ed. 383, affirming 20 Blatchf. 304, 10 Fed. 362.

¹⁴ *Crandall v. Nevada*, 6 Wall. 39, 18 L. ed. 745.

¹⁵ *People v. Compagnie Generale etc.*, 107 U. S. 61, 2 S. Ct. 87, 27 L. ed. 383; *People v. Pacific Mail S. S. Co.*, 8 Saw. 640.

¹⁶ *In re Wong Yung Quy*, 6 Saw. 442.

¹⁷ *State v. Delaware etc. R. R. Co.*, 31 N. J. L. 531.

¹⁸ *Dooley v. United States*, 182 U. S. 222, 22 S. Ct. 64, 45 L. ed. 1074.

— Imports or Duties.

An "impost" is a custom, or tax, levied on articles brought into the country; it is not merely a duty on the act of importation, but a duty on the thing imported;¹⁹ it is a duty on imported goods and merchandise.²⁰

"Duties" are defined to be things due and recoverable by law. Applied in its widest signification, the term is hardly less comprehensive than "taxes," and in its most restricted meaning as to customs it is almost the synonym of "imposts."²¹ The prohibition contained in this clause is a limitation on the power of the states to levy taxes.²²

The object of the prohibition is to protect both vessel and cargo from state taxation while in transitu, and it cannot be evaded and the same result effected by calling the tax one on the passengers or on the master;²³ the purpose and validity of the statute must be determined by its natural and reasonable effect.²⁴ The prohibition is general, and reaches a tax on the sale of the article imported and on the occupation of the importer.²⁵

¹⁹ *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678; *Hinson v. Lott*, 8 Wall. 148, 19 L. ed. 387; *Case of State Freight Tax*, 15 Wall. 232, 21 L. ed. 146; *Bode v. State*, 7 Gill, 326; *State v. Sluby*, 2 Har. & J. 480; *Wynne v. Wright*, 4 Dev. & B. 19; *Sheffield v. Parsons*, 3 Stew. & P. 302.

²⁰ *Pacific Ins. Co. v. Soule*, 7 Wall. 445, 19 L. ed. 95; *Hancock v. Singer etc. Co.*, 62 N. J. L. 334, 41 Atl. 849, 43 L. R. A. 852.

²¹ *Pacific Ins. Co. v. Soule*, 7 Wall. 445, 19 L. ed. 95.

²² *Gibbons v. Ogden*, 9 Wheat. 201, 6 L. ed. 23; *Passenger Cases*, 7 How. 501, 12 L. ed. 702; *Hamilton Co. v. Massachusetts*, 6 Wall. 639, 18 L. ed. 904.

²³ *Passenger Cases*, 7 How. 501, 502, 549, 12 L. ed. 702; *Grandall v. Nevada*, 6 Wall. 40, 18 L. ed. 745; *People v. Compagnie Generale etc.*, 107 U. S. 60, 2 S. Ct. 88, 27 L. ed. 383, affirming 20 Blatchf. 300, 10 Fed. 360; *People v. Downer*, 7 Cal. 169; *Webb v. Dunn*, 18 Fla. 724.

²⁴ *Henderson v. New York*, 92 U. S. 269, 23 L. ed. 543.

²⁵ *Brown v. Maryland*, 12 Wheat. 442, 6 L. ed. 678; *Cook v. Pennsylvania*, 97 U. S. 573, 24 L. ed. 1015; *License Cases*, 5 How. 504, 12 L. ed. 256; *Walling v. Michigan*, 116 U. S. 460, 6 S. Ct. 460, 29 L. ed. 691; *State v. North*, 27 Mo. 464; *Biddle v. Commonwealth*, 13 Serg. & B. 405; *State v. Kennedy*, 19 La. Ann. 426, 427.

Sale is the object of importation and is an essential ingredient of that intercourse of which importation constitutes a part,²⁶ and by the payment of duty the importer purchases the right to dispose of his goods as well as to bring them into the country.²⁷ The payment of duties includes the authority to sell without the necessity of a state license; so a state law requiring importers to take out a license to sell imported goods is an indirect tax upon imports.²⁸ A tax on sales of imported merchandise in original packages by brokers and auctioneers is unconstitutional;²⁹ but a tax on the gross sales of a purchaser from the importer is not a tax on imports.³⁰ A tax on such sales is a tax on the proceeds, and not on the imports.³¹

A tax on bills of lading of foreign articles is a tax on imports, and void.³² A stamp tax on a foreign bill of exchange drawn in the state is not an impost or tax on exports;³³ but a law requiring a stamp to be affixed to every bill of lading for

²⁶ *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678.

²⁷ *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678; *Hinson v. Lott*, 8 Wall. 152, 19 L. ed. 387.

²⁸ *Gibbons v. Ogden*, 9 Wheat. 212, 6 L. ed. 23; *Brown v. Maryland*, 12 Wheat. 447, 6 L. ed. 678; *License Cases*, 5 How. 504, 12 L. ed. 256; *Waring v. Mayor*, 8 Wall. 119, 19 L. ed. 342. And see *Pervear v. Commonwealth*, 5 Wall. 478, 18 L. ed. 608.

²⁹ *Low v. Austin*, 13 Wall. 33, 20 L. ed. 517; *Cook v. Pennsylvania*, 97 U. S. 573, 24 L. ed. 1015; *Bowman v. Chicago etc. R. R. Co.*, 125 U. S. 494, 8 S. Ct. 703, 31 L. ed. 700; *Hynes v. Briggs*, 41 Fed. 470; *In re Minor*, 69 Fed. 325; *People v. Moring*, 47 Barb. 642; *Gelpi v. Treasurer*, 48 La. Ann. 1537, 21 South. 116; *State v. Board of Assessors*, 46 La. Ann. 146, 49 Am. St. Rep. 319, 15 South. 11.

³⁰ *Waring v. Mayor*, 8 Wall. 122, 19 L. ed. 342; *Schollenberger v. Pennsylvania*, 171 U. S. 24, 18 S. Ct. 766, 43 L. ed. 57; *Standard Oil Co. v. Combs*, 96 Ind. 184, 49 Am. Rep. 160; *Brown v. Houston*, 33 La. Ann. 845, 39 Am. Rep. 286; *People v. Roberts*, 158 N. Y. 166, 52 N. E. 1103.

³¹ *State v. Pinckney*, 18 Rich. 474. And see *Wintz v. Girardey*, 31 La. Ann. 386.

³² *Almy v. California*, 24 How. 174, 175, 16 L. ed. 644; *Brummagim v. Tillinghast*, 18 Cal. 265, 79 Am. Dec. 178; *Erie Ry. Co. v. State*, 31 N. J. L. 541, 86 Am. Dec. 235.

³³ *Ex parte Martin*, 7 Nev. 140, 8 Am. Rep. 707.

gold-dust exported, is in substance a duty on the article exported, and is unconstitutional.³⁴ Where, however, the requirement that an article intended for export shall be stamped merely provides a mode for denoting such intention, it cannot be said to impose a duty on exports.³⁵ State pilot laws are not embraced in the words "imposts or duties on imports."³⁶ A tax or toll imposed on lumber floated down a river running through a state into another is void.³⁷

— Inspection Taxes.

A tax levied to cover the expenses of inspection is an exception to the constitutional prohibition on the states to lay duties on imports or exports.³⁸ The collection of the amount necessary to execute state inspection laws is expressly authorized by this clause,³⁹ and when the right of inspection is properly exercised, it applies to imports as well as exports.⁴⁰ The object of state inspection laws is to improve the quality of articles produced and fit them for articles of commerce,⁴¹ and they are upheld as necessary to promote the interests of commerce.⁴² So far as such laws operate on articles for export they are generally executed on land before the articles are put on board; and so far as they operate on imports they are gen-

³⁴ *Almy v. California*, 24 How. 174, 175, 16 L. ed. 644; *Reading R. Co. v. Pennsylvania*, 15 Wall. 280, 21 L. ed. 146. And see *People v. Raymond*, 34 Cal. 498.

³⁵ *Pace v. Burgess*, 92 U. S. 372, 23 L. ed. 657; *Turpin v. Burgess*, 117 U. S. 505, 6 S. Ct. 835, 29 L. ed. 988; *Burwell v. Burgess*, 32 Gratt. 478.

³⁶ *Cooley v. Port Wardens*, 12 How. 299, 13 L. ed. 996; *Baker v. Wise*, 16 Gratt. 139.

³⁷ *Carson River Lumbering Co. v. Patterson*, 33 Cal. 334.

³⁸ *Brown v. Maryland*, 12 Wheat. 438, 6 L. ed. 678; *Turner v. Maryland*, 107 U. S. 57, 2 S. Ct. 61, 27 L. ed. 370.

³⁹ *Patapsco Guano Co. v. North Carolina*, 171 U. S. 354, 18 S. Ct. 862, 43 L. ed. 191.

⁴⁰ *Neilson v. Garza*, 2 Woods, 287.

⁴¹ *Gibbons v. Ogden*, 9 Wheat. 203, 6 L. ed. 23; *Patapsco Guano Co. v. North Carolina*, 171 U. S. 357, 18 S. Ct. 862, 43 L. ed. 191.

⁴² *State Tonnage Tax Cases*, 12 Wall. 204, 20 L. ed. 370.

erally executed on articles already landed.⁴³ So an inspection law may require every hogshead of tobacco intended for export to be brought to a state warehouse to be inspected and branded, and to pay charges for storage and inspection.⁴⁴ A state law providing for the inspection of imported liquors, to be valid, must not substantially hamper the constitutional right to make or receive shipments.⁴⁵ A state law providing for a gauger at a port of delivery is not unconstitutional.⁴⁶ This exception in favor of inspection charges applies only to the inspection of property and cannot apply to persons.⁴⁷ Where a duty purports to be an inspection tax, the question whether it is excessive is for Congress to determine.⁴⁸ But the fact that the tax levied is more than sufficient to cover the cost of inspection cannot determine its validity.⁴⁹

The provision that the net produce shall be for the use of the treasury of the United States applies only to taxes imposed for inspection purposes.⁵⁰ The states' power to pass inspection laws is subject to the control and revision of Congress.⁵¹ The consent of Congress need not be given in advance, but may be implied from legislation.⁵² The power to enact inspection laws includes the power to enforce them, and fees for the compensation of officers are not imposts.⁵³

⁴³ *Brown v. Maryland*, 12 Wheat. 438, 6 L. ed. 678.

⁴⁴ *Turner v. Maryland*, 107 U. S. 55, 2 S. Ct. 61, 27 L. ed. 370.

⁴⁵ *Vance v. W. A. Vandercook Co.*, 170 U. S. 456, 18 S. Ct. 674, 42 L. ed. 1100; *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144.

⁴⁶ *Addison v. Saulnier*, 19 Cal. 82.

⁴⁷ *People v. Compagnie Generale etc.*, 107 U. S. 59, 2 S. Ct. 87, 27 L. ed. 383.

⁴⁸ *Neilson v. Garza*, 2 Woods, 290. And see *Turner v. Maryland*, 107 U. S. 55, 2 S. Ct. 61, 27 L. ed. 370.

⁴⁹ *Pabst Brewing Co. v. Crenshaw*, 120 Fed. 144.

⁵⁰ *Padelford v. Mayor*, 14 Ga. 438.

⁵¹ *Gibbons v. Ogden*, 9 Wheat. 201, 6 L. ed. 23; *Brown v. Maryland*, 12 Wheat. 438, 6 L. ed. 678; *State Tonnage Tax Cases*, 12 Wall. 204, 20 L. ed. 370; *Railroad Co. v. Peniston*, 3 Stew. & P. 302.

⁵² *Green v. Biddle*, 8 Wheat. 8, 5 L. ed. 547; *Virginia v. West Virginia*, 11 Wall. 60, 20 L. ed. 67; *Martin v. Baltimore etc. R. R. Co.*, 151 U. S. 680, 14 S. Ct. 536, 38 L. ed. 311; *Wharton v. Wise*, 153 U. S. 173, 14 S. Ct. 788, 38 L. ed. 669.

⁵³ *Addison v. Saulnier*, 19 Cal. 82.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Tonnage Duties.

A tonnage duty is a charge on a vessel according to its capacity.¹ The object of this prohibition was to protect the freedom of commerce, and it should be so construed.² Tonnage is a vessel's internal cubical capacity estimated in tons, and the characteristic of a tonnage duty is the fact that it is imposed according to the rule of weight.³

The prohibition in this clause is general, withdrawing the power from the states except by the consent of Congress.⁴ The power to levy tonnage duties resides solely in Congress, and its consent is necessary to the exercise of any such power by the states;⁵ but this consent need not be given in advance and may be implied by the adoption or approval of acts already done.⁶

"Duty" means a custom or toll,^{6a} and as here used is not

¹ *Inman Steamship Co. v. Tinker*, 94 U. S. 245, 24 L. ed. 118; *Huse v. Glover*, 119 U. S. 543, 7 S. Ct. 313, 30 L. ed. 487; *Webb v. Dunn*, 18 Fla. 727; *South Carolina v. Charleston*, 4 Rich. 289.

² *Pittsburgh etc. Coal Co. v. Louisiana*, 156 U. S. 600, 15 S. Ct. 459, 39 L. ed. 544.

³ *Inman Steamship Co. v. Tinker*, 94 U. S. 238, 24 L. ed. 118; *The North Cape*, 6 Biss. 505.

⁴ *State Tonnage Tax Cases*, 12 Wall. 214, 20 L. ed. 370; *Ward v. Maryland*, 12 Wall. 427, 20 L. ed. 449; *People v. Rensselaer etc. R. Co.*, 15 Wend. 131, 30 Am. Dec. 33; *Steamboat Co. v. Livingston*, 3 Cow. 743; *Sheffield v. Parsons*, 3 Stew. & P. 302.

⁵ *Gibbons v. Ogden*, 9 Wheat. 201, 6 L. ed. 23.

⁶ *Green v. Biddle*, 8 Wheat. 87, 5 L. ed. 547; *Virginia v. West Virginia*, 11 Wall. 60, 20 L. ed. 67; *Martin v. Baltimore etc. R. Co.*, 151 U. S. 680, 14 S. Ct. 536, 38 L. ed. 311; *Wharton v. Wise*, 153 U. S. 173, 14 S. Ct. 788, 38 L. ed. 669.

^{6a} *Sheffield v. Parsons*, 3 Stew. & P. 302.

less comprehensive than the broad term "tax,"⁷ and any duty, whether a fixed sum upon the whole tonnage of a vessel or to be ascertained by comparing tonnage with rate of duty, comes within the prohibition.⁸ So a tax on the master or cargo, or on some privilege to be enjoyed by the vessel, as of engaging in a particular trade, if really and substantially a duty on tonnage, is unconstitutional; e. g., a license fee imposed on the master of an oyster boat according to the tonnage of his boat.⁹ And this protection extends to all vessels employed in the coasting trade, whether in commercial intercourse between ports of different states or ports of the same state.¹⁰ Thus, a tax on ships entering a port is void,¹¹ as also is a tax upon vessels plying state waters.¹² A statute laying a tonnage duty on vessels employed as lighters to assist vessels employed in foreign commerce is void.¹³

The fact that the proceeds of the tax do not go into the public treasury does not affect its character as a duty on tonnage,¹⁴ nor can a tax which is essentially a duty on tonnage be upheld as a tax on property.¹⁵ But a tax which is imposed upon vessels owned in the state like any other property is valid.¹⁶ A tax levied on a vessel as property in the state at

7 *Pacific Ins. Co. v. Soule*, 7 Wall. 445, 19 L. ed. 95.

8 *Southern Steamship Co. v. Port Wardens*, 6 Wall. 35, 18 L. ed. 749; *Johnson v. Drummond*, 20 Gratt. 419.

9 *Johnson v. Drummond*, 20 Gratt. 419.

10 *State Tonnage Tax Cases*, 12 Wall. 218, 20 L. ed. 370; *Lott v. Morgan*, 41 Ala. 246.

11 *Cannon v. New Orleans*, 20 Wall. 581, 22 L. ed. 417; *Inman Steamship Co. v. Tinker*, 94 U. S. 244, 24 L. ed. 118; *St. Louis v. Schulenburg etc. Co.*, 13 Mo. App. 60; *N. W. U. P. Co. v. St. Paul*, 3 Dill. 454.

12 *Lott v. Mobile Trade Co.*, 42 Ala. 578; *Lott v. Cox*, 43 Ala. 697.

13 *Lott v. Morgan*, 41 Ala. 246.

14 *Sheffield v. Parsons*, 3 Stew. & P. 302; *Alexander v. Railroad Co.*, 3 Strob. 594.

15 *State Tonnage Tax Cases*, 12 Wall. 218, 20 L. ed. 370.

16 *Transportation Co. v. Wheeling*, 99 U. S. 284, 25 L. ed. 412, affirming 9 W. Va. 170, 27 Am. Rep. 552; *The North Cape*, 6 Biss. 505, Fed. Cas. No. 10,316; *Lott v. Mobile Trade Co.*, 43 Ala. 578; *Gunther v. City of Baltimore*, 55 Md. 457.

her home port is valid,¹⁷ although such vessel is enrolled and registered under United States laws.¹⁸ So the assessment of a vessel in its own city for a city tax is not objectionable as a duty on tonnage.¹⁹ A state license fee for ferrying on a navigable river is not a tonnage tax, but is a proper exercise of the police power, and the fact that a vessel is enrolled under federal laws does not exempt it.²⁰ A state cannot levy a tax on tonnage upon interstate transportation.²¹ But a tax based upon the gross receipts derived from transportation is unobjectionable.²² Such a tax, however, must be in the nature of a property tax;²³ a tax upon the receipts as such is void.²⁴

A tonnage tax cannot be employed as a means of enforcing some law which it is within the constitutional authority of the state to enact.²⁵ So a state cannot impose a tonnage tax or duty to defray the expenses of its quarantine system,²⁶ but a fixed fee for examination imposed on all vessels passing quarantine is valid.²⁷ Charges for pilotage are not repugnant

¹⁷ *State Tonnage Tax Cases*, 12 Wall. 212, 20 L. ed. 370; *Passenger Cases*, 7 How. 283, 12 L. ed. 702; *Morgan v. Parham*, 16 Wall. 472, 21 L. ed. 303.

¹⁸ *Transportation Co. v. Wheeling*, 99 U. S. 284, 25 L. ed. 412, affirming 9 W. Va. 170, 27 Am. Rep. 552; *Lott v. Mobile T. Co.*, 42 Ala. 578; *Lott v. Cox*, 43 Ala. 697.

¹⁹ *The North Cape*, 6 Biss. 505, Fed. Cas. No. 10,316.

²⁰ *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 375, 377, 2 S. Ct. 25, 27 L. ed. 419. But see *Moran v. New Orleans*, 112 U. S. 74, 50 S. Ct. 40, 28 L. ed. 653.

²¹ *Case of the State Freight Tax*, 15 Wall. 225, 21 L. ed. 146; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 212, 5 S. Ct. 833, 29 L. ed. 158; *Steamship Co. v. Pennsylvania*, 122 U. S. 338, 30 L. ed. 1200.

²² *State Tax on Railway Gross Receipts*, 15 Wall. 296, 21 L. ed. 164; *Osborne v. Mobile*, 16 Wall. 481, 21 L. ed. 470.

²³ *McHenry v. Alford*, 168 U. S. 670, 8 S. Ct. 250, 42 L. ed. 614.

²⁴ *Fargo v. Michigan*, 121 U. S. 242, 7 S. Ct. 861, 30 L. ed. 888; *Indiana v. American Exp. Co.*, 7 Biss. 230, Fed. Cas. No. 7021; *Vermont R. R. Co. v. Central Vt. R. R. Co.*, 63 Vt. 23, 21 Atl. 267, 10 L. R. A. 562.

²⁵ *Johnson v. Drummond*, 20 Gratt. 419.

²⁶ *Peete v. Morgan*, 19 Wall. 581, 22 L. ed. 201.

²⁷ *Morgan v. Louisiana*, 118 U. S. 462, 6 S. Ct. 1118, 30 L. ed. 237, affirming 36 La. Ann. 669.

to this clause,²⁸ and this notwithstanding the law charges vessels with half fees if a pilot is not taken.²⁹

— Compensatory Fees.

Where a state, or a city by authority of a state, has improved its rivers and harbors by erecting docks and wharves, it may regulate their use and charge tolls therefor.³⁰ Wharfage charged to vessels for the use of a wharf is not a tonnage duty, notwithstanding it is graduated according to the size of the vessels computed by their tonnage.³¹ For the purpose of regulating the compensation to be paid, it is immaterial whether the wharf were built by the state, a municipal corporation or an individual,³² and where a wharf is owned by a city, the fact that the city realizes a profit beyond the amount expended does not render the toll objectionable.³³

A statute allowing fees to harbor-masters for assigning vessels to their berths is not a tonnage duty, although the fees are ascertained by the tonnage.³⁴ Such services must, however, be

²⁸ *Cooley v. Board of Wardens*, 12 How. 313, 13 L. ed. 996; *Harrison v. Green*, 18 Cal. 94; *Baker v. Wise*, 16 Gratt. 139.

²⁹ *Cooley v. Board of Wardens*, 12 How. 319, 320, 13 L. ed. 996; *Steamship Co. v. Juliffer*, 2 Wall. 457, 17 L. ed. 805; *Ex parte McNeil*, 13 Wall. 242, 20 L. ed. 624.

³⁰ *Packet Co. v. Catlettsburg*, 105 U. S. 563, 26 L. ed. 1169; *Transportation Co. v. Parkersburg*, 107 U. S. 702, 2 S. Ct. 741, 27 L. ed. 584; *Ouachita Packet Co. v. Aiken*, 121 U. S. 447, 7 S. Ct. 909, 30 L. ed. 976; *Dubuque v. Stout*, 32 Iowa, 86, 7 Am. Rep. 176; *Thames Bank v. Lovell*, 18 Conn. 500, 46 Am. Dec. 332; *Kusenbergh v. Browne*, 42 Pa. St. 182.

³¹ *Packet Co. v. Keokuk*, 95 U. S. 84, 24 L. ed. 377; *Packet Co. v. St. Louis*, 100 U. S. 429, 25 L. ed. 688; *Vicksburg v. Tobin*, 100 U. S. 430, 25 L. ed. 690; *Transportation Co. v. Parkersburg*, 107 U. S. 691, 2 S. Ct. 732, 27 L. ed. 584; *Northwestern etc. Co. v. St. Louis*, 4 Dill. 15; *People v. Roberts*, 92 Cal. 659, 28 Pac. 689; *O'Conley v. City of Natchez*, 9 Miss. 31, 40 Am. Dec. 87; *The Ann Ryan*, 7 Ben. 20, Fed. Cas. No. 428.

³² *Packet Co. v. Keokuk*, 95 U. S. 84, 24 L. ed. 377; *Cannon v. New Orleans*, 20 Wall. 577.

³³ *Ouachita Packet Co. v. Aiken*, 121 U. S. 449, 7 S. Ct. 909, 30 L. ed. 976.

³⁴ *State v. Charleston*, 4 Rich. 286; *Benedict v. Vanderbilt*, 1 Rob.

actually rendered and a law allowing harbor-masters or port wardens to impose a fee in all cases is void.³⁵ Fees exacted for the use of improved rivers and locks or canals are not repugnant to this clause,³⁶ and charges may be based upon tonnage as in the case of wharves.³⁷

Neither a state nor a municipality can impose a tonnage tax under cover of collecting fees for the use of improvements.³⁸ So a tax levied upon all vessels entering and mooring anywhere in port, without reference to their use of wharves or other improvements, is a tonnage duty and so void,³⁹ and the collection of fees by the state or municipality in absence of ownership of the wharves is unconstitutional.⁴⁰ The power of the states over wharfage includes the power to discriminate between different vessels and different occupations in the assignments of berths,⁴¹ but any discrimination against products coming from other states would be void under the commerce clause.⁴² Whether a charge is wharfage or a duty of tonnage is a question, not of intent, but of fact and law—of fact, whether it is imposed for the use of a wharf or for the privilege of entering

194; *Port Wardens v. The Martha J. Ward*, 14 La. Ann. 289; *Master v. Prata*, 10 Rob. (La.) 459.

³⁵ *Southern Steamship Co. v. Port Wardens*, 6 Wall. 31, 18 L. ed. 749; *Inman Steamship Co. v. Tinker*, 94 U. S. 238, 24 L. ed. 113; *Hackley v. Geraghty*, 34 N. J. L. 332; *Sheffield v. Parsons*, 3 Stew. & P. 302; *Alexander v. Railroad Co.*, 3 Strob. 594; *Harbor-Master etc. v. Southerland*, 47 Ala. 516.

³⁶ *Huse v. Glover*, 119 U. S. 548, 7 S. Ct. 313, 30 L. ed. 487, affirming 15 Fed. 292; *Sands v. Manistee River Imp. Co.*, 123 U. S. 293, 8 S. Ct. 117, 31 L. ed. 149; *Thames Bank v. Lovell*, 18 Conn. 500, 46 Am. Dec. 332; *Carondelet Canal etc. Co. v. Parker*, 29 La. Ann. 430, 29 Am. Rep. 339.

³⁷ *Huse v. Glover*, 119 U. S. 548, 7 S. Ct. 313, 30 L. ed. 487.

³⁸ *Packet Co. v. Keokuk*, 95 U. S. 86, 24 L. ed. 377; *State Tonnage Tax Cases*, 12 Wheat. 219, 6 L. ed. 606; *The Lizzie E.*, 30 Fed. 873.

³⁹ *Cannon v. New Orleans*, 20 Wall. 581, 22 L. ed. 417; *Transportation Co. v. Parkersburg*, 107 U. S. 699, 2 S. Ct. 732, 27 L. ed. 584; *Northwestern U. P. Co. v. St. Paul*, 3 Dill. 454, Fed. Cas. No. 10,346; *St. Louis v. Schulenburg etc. Co.*, 13 Mo. App. 60.

⁴⁰ *People v. Pacific Rolling Mills*, 60 Cal. 327.

⁴¹ *The John M. Welch*, 9 Ben. 507, Fed. Cas. No. 7359.

⁴² *The Wharf Case*, 3 Bland, 361.

a port; of law, whether according to the facts it is a wharfage or a duty of tonnage.⁴³ Penalties imposed for refusal to obey municipal rules as to landing places and harbor-master's orders, are not tonnage taxes.⁴⁴

Agreements or Compacts.*

As respects their local government, the states are sovereign within their own limits and foreign to each other.⁴⁵ This sovereignty of the states in their relations with each other is qualified,⁴⁶ in that they have surrendered their treaty-making powers to the general government,⁴⁷ and it is the right and duty of the general government to protect the interests of the several states in their relations with each other.⁴⁸

The terms "compacts" and "agreements," as used in this section, cover all stipulations affecting the conduct or claims of states,⁴⁹ whether verbal or written, formal or informal, positive or implied, with each other or with foreign powers.⁵⁰ Such an agreement or compact as is in its nature political, or which may conflict with the powers delegated to the general government,⁵¹ as on the question of boundary between the states⁵² or

⁴³ *Transportation Co. v. Parkersburg*, 107 U. S. 696, 2 S. Ct. 732, 27 L. ed. 584.

⁴⁴ *Packet Co. v. Catlettsburg*, 105 U. S. 562, 26 L. ed. 1169.

⁴⁵ *Buckner v. Finley*, 2 Pet. 591, 7 L. ed. 528; *Bank of United States v. Daniel*, 12 Pet. 54, 9 L. ed. 989; *Mahon v. Justice*, 127 U. S. 706, 8 S. Ct. 1204, 32 L. ed. 283; *Hatch v. Spofford*, 22 Conn. 497, 58 Am. Dec. 436; *Seever v. Clement*, 28 Md. 434; *Smith v. Lathrop*, 44 Pa. St. 330, 84 Am. Dec. 450.

⁴⁶ *Mahon v. Justice*, 127 U. S. 705, 8 S. Ct. 1204, 32 L. ed. 283.

⁴⁷ *Holmes v. Jennison*, 14 Pet. 571, 10 L. ed. 579; *United States v. Rauscher*, 119 U. S. 412, 7 S. Ct. 237, 30 L. ed. 425; *In re Parrott*, 1 Fed. 481; *People v. Curtis*, 50 N. Y. 325, 10 Am. Rep. 486.

⁴⁸ *Florida v. Georgia*, 17 How. 478, 15 L. ed. 181.

⁴⁹ *Virginia v. Tennessee*, 148 U. S. 520, 13 S. Ct. 728, 37 L. ed. 537.

⁵⁰ *Holmes v. Jennison*, 14 Pet. 571, 10 L. ed. 579.

⁵¹ *Union R. R. Co. v. East Tennessee R. R. Co.*, 14 Ga. 327.

⁵² *Florida v. Georgia*, 17 How. 478, 15 L. ed. 181; *Virginia v. West Virginia*, 11 Wall. 60, 20 L. ed. 67; *Virginia v. Tennessee*, 148 U. S. 520, 13 S. Ct. 728, 37 L. ed. 537.

* See, also, art. I, § 10, cl. 1, ante.

the surrender of fugitives,⁵³ cannot operate as a restriction upon the powers of Congress under the constitution.⁵⁴ The consent of Congress is necessary to the binding force of any such agreement or compact;⁵⁵ but the mode or form in which such consent shall be evidenced is in the discretion of Congress. It may be given after an agreement has been reached, and may be implied from the sanction and enforcement of its objects, or by the adoption or approval of proceedings taken under it.⁵⁶ A compact made with the consent of Congress is binding upon the contracting states and upon their subjects and citizens.⁵⁷

The prohibition is political, and has no reference to grants of franchises.⁵⁸ So an agreement between corporations chartered by different states, to consolidate, cannot in any sense be deemed an agreement or compact between states.⁵⁹ An agreement between states entered into in 1785 did not violate the Articles of Confederation.⁶⁰ The selection of parties to fix the boundary line between states imports no agreement to accept such line; hence is not within the prohibition.⁶¹ The confederation of the seceding states was in direct violation of this clause.⁶²

⁵³ *Holmes v. Jennison*, 14 Pet. 574, 10 L. ed. 579; *People v. Curtis*, 50 N. Y. 325, 10 Am. Rep. 486; *United States v. Rauscher*, 119 U. S. 412, 7 S. Ct. 237, 30 L. ed. 425.

⁵⁴ *Wilson v. Mason*, 1 Cr. 45, 2 L. ed. 29; *Pennsylvania v. Wheeling etc. Br. Co.*, 18 How. 421, 15 L. ed. 435.

⁵⁵ *Virginia v. West Virginia*, 11 Wall. 60, 20 L. ed. 67; *Virginia v. Tennessee*, 148 U. S. 520, 13 S. Ct. 728, 37 L. ed. 537; *New Hampshire v. Louisiana*, 108 U. S. 76, 2 S. Ct. 176, 27 L. ed. 656.

⁵⁶ *Green v. Biddle*, 8 Wheat. 87, 5 L. ed. 547; *Virginia v. Tennessee*, 148 U. S. 521, 13 S. Ct. 728, 37 L. ed. 537.

⁵⁷ *Poole v. Fleegler*, 11 Pet. 209, 9 L. ed. 680; *Missouri v. Iowa*, 7 How. 667, 12 L. ed. 861; *Rhode Island v. Massachusetts*, 12 Pet. 657, 9 L. ed. 233.

⁵⁸ *Union Branch R. R. Co. v. East Tennessee etc. R. R. Co.*, 14 Ga. 327.

⁵⁹ *Dover v. Portsmouth Br.*, 17 N. H. 200.

⁶⁰ *Wharton v. Wise*, 153 U. S. 167, 14 S. Ct. 787, 38 L. ed. 669.

⁶¹ *Virginia v. Tennessee*, 148 U. S. 520, 13 S. Ct. 728, 37 L. ed. 537.

⁶² *In re Milner*, 1 Bank. Reg. 107.

Troops.

The states cannot, without the consent of Congress, levy war, or make peace or enter into a compact with any other state.⁶³ The organization and maintenance of an active state militia is not a keeping of troops in time of peace, within the prohibition of this clause.⁶⁴ This clause contemplates the use of the state's military power to put down an armed insurrection too strong to be controlled by civil authority, and the state concerned must determine what degree of force the crisis demands.⁶⁵

⁶³ *New Hampshire v. Louisiana*, 108 U. S. 76, 2 S. Ct. 176, 27 L. ed. 656.

⁶⁴ *Dunne v. People*, 94 Ill. 120; *State v. Wagener*, 74 Minn. 573, 73 Am. St. Rep. 369, 77 N. W. 424, 42 L. R. A. 749.

⁶⁵ *Luther v. Borden*, 7 How. 45, 12 L. ed. 581.

ARTICLE II.

EXECUTIVE DEPARTMENT.

SECTION 1.

POWERS OF EXECUTIVE.

1. President and Vice-President. Terms of.
2. Electors.
3. Manner of choosing President by electors.
4. Time of choosing electors.
5. President's qualifications.
6. Vacancy in office of.
7. Salary.
8. Oath.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Executive Powers in General.

Under the constitution certain political powers are vested in the President which are to be exercised by him in his discretion without any hindrance or control on the part of the judiciary,¹ and so far as he derives his powers from the constitution, he is beyond the reach of any other department of government, except by impeachment in the mode prescribed

¹ *Marbury v. Madison*, 1 Cr. 169, 170, 2 L. ed. 60; *In re Kaine*, 14 How. 119, 128, 14 L. ed. 345; *Bartlett v. Kane*, 16 How. 272, 14 L. ed. 931; *Board of Liquidation v. McComb*, 92 U. S. 541, 23 L. ed. 623; *Craig v. Leitensdorfer*, 123 U. S. 211, 8 S. Ct. 85, 31 L. ed. 114; *Quackenbush v. United States*, 177 U. S. 25, 20 S. Ct. 530, 44 L. ed. 654; *Durand v. Hollins*, 4 Blatchf. 454, Fed. Cas. No. 4186; *State v. Churchill*, 48 Ark. 443, 3 S. W. 360; *Burch v. Hardwicke*, 23 Gratt. 51; *Dreucker v. Salomon*, 21 Wis. 629, 94 Am. Dec. 577; *Worthington v. Scribner*, 109 Mass. 487, 12 Am. Dec. 739.

in the constitution.² In the performance of any act involving the exercise of discretion the executive is exempt from mandamus or injunction.³ Nor is the President subject to the writ of habeas corpus.⁴

The President properly acts through the heads of the several departments of the executive branch of the government, in relation to the subjects appertaining to their respective duties,⁵ and the acts of such department heads are deemed to be the acts of the President himself.⁶ Accordingly the discretionary acts of executive departments are exempt from judicial control.⁷

² *Kendall v. United States*, 12 Pet. 610, 9 L. ed. 1181; *State ex rel. v. Governor*, 17 Fla. 74. And see *United States v. Arredondo*, 6 Pet. 729, 8 L. ed. 547.

³ *Marbury v. Madison*, 1 Cr. 169-173, 2 L. ed. 60; *Mississippi v. Johnson*, 4 Wall. 500, 18 L. ed. 437; *Georgia v. Stanton*, 6 Wall. 77, 18 L. ed. 721; *United States v. Black*, 128 U. S. 48, 9 S. Ct. 12, 32 L. ed. 354; *United States v. Blaine*, 139 U. S. 319, 11 S. Ct. 607, 35 L. ed. 183; *Keim v. United States*, 177 U. S. 293, 20 S. Ct. 574, 44 L. ed. 774.

⁴ *In re Keeler*, Hemp. 306, Fed. Cas. No. 7637.

⁵ *Williams v. United States*, 1 How. 298, 11 L. ed. 135; *Runkle v. United States*, 122 U. S. 557, 7 S. Ct. 1141, 30 L. ed. 1167.

⁶ *Wilcox v. Jackson*, 13 Pet. 513, 10 L. ed. 264; *United States v. Farden*, 99 U. S. 19, 25 L. ed. 267; *Hegler v. Faulkner*, 153 U. S. 117, 14 S. Ct. 779, 38 L. ed. 653; *United States v. Baltimore etc. R. R. Co.*, 1 Hughes, 144, Fed. Cas. No. 14,510; *In re Sprangler*, 11 Mich. 332; *United States v. Cutter*, 2 Curt. 623, Fed. Cas. No. 14,911.

⁷ *Bartlett v. Kane*, 16 How. 272, 14 L. ed. 931; *Board of Liquidation v. McComb*, 92 U. S. 541, 23 L. ed. 623; *United States v. Bashaw*, 152 U. S. 443, 14 S. Ct. 638, 38 L. ed. 505; *Keim v. United States*, 177 U. S. 292, 20 S. Ct. 574, 44 L. ed. 774; *Carrick v. Lamar*, 116 U. S. 426, 6 S. Ct. 425, 29 L. ed. 677. Instances of acts which the courts have held to be discretionary are to be found in *Decatur v. Paulding*, 14 Pet. 515-517, 10 L. ed. 559; *Brashear v. Mason*, 6 How. 101, 12 L. ed. 357; *Reeside v. Walker*, 11 How. 290, 13 L. ed. 693; *United States v. Seaman*, 17 How. 230; *United States v. Guthrie*, 17 How. 304, 15 L. ed. 102; *Commissioner of Patents v. Whiteley*, 4 Wall. 534, 18 L. ed. 335; *Gaines v. Thompson*, 7 Wall. 350, 19 L. ed. 62; *Secretary v. McGarrahan*, 9 Wall. 312, 19 L. ed. 579; *Carrick v. Lamar*, 116 U. S. 426, 6 S. Ct. 425, 29 L. ed. 677; *United States v. Black*, 128 U. S. 45, 9 S. Ct. 13, 32 L. ed. 354; *United States v. Lynch*, 137 U. S. 286, 11 S. Ct. 116, 34 L. ed. 700; *Redfield v. Windom*, 137 U. S. 643, 11 S. Ct. 199, 34 L. ed. 811.

A distinction is to be made between those acts which involve the exercise of judgment or discretion, and those in which the duty is merely ministerial.⁸ In the latter class of acts the duty is one "imposed by law,"⁹ "peremptorily and plainly defined."¹⁰ When these acts are in question the officer is required to abandon his right to exercise his personal judgment,¹¹ and the performance of the act may be compelled or forbidden as the right appears to the court.¹²

"Political questions" are always matters of discretion, and as to these the courts disclaim any right of control,¹³ and when the executive department has not parted with its power over a political matter the intervention of the judicial department cannot be invoked.¹⁴ Of a political nature are questions relating to the recognition of the existence of an Indian tribal relation;¹⁵ the public character of a person claiming to be a foreign minister;¹⁶ the fixing of the date when foreign jurisdiction over acquired territory ceases;¹⁷ whether or not a state

⁸ *Marbury v. Madison*, 1 Cr. 169-173, 2 L. ed. 60.

⁹ *Knox County Commissioners v. Aspinwall*, 24 How. 376, 16 L. ed. 735.

¹⁰ *United States ex rel. v. Lamont*, 155 U. S. 308, 15 S. Ct. 98, 39 L. ed. 160; *Enterprise etc. v. Zumstein*, 67 Fed. 1007; *State ex rel. v. Meier*, 143 Mo. 446, 43 S. W. 307; *State v. Lord*, 28 Or. 525, 43 Pac. 478, 31 L. R. A. 473.

¹¹ *Gaines v. Thompson*, 7 Wall. 352, 19 L. ed. 62; *Noble v. Union etc. Co.*, 147 U. S. 171, 13 S. Ct. 272, 37 L. ed. 123; *Lane v. Anderson*, 67 Fed. 565; *Dudley v. James*, 83 Fed. 349.

¹² *Marbury v. Madison*, 1 Cr. 169-173, 2 L. ed. 60; *Gaines v. Thompson*, 7 Wall. 349, 19 L. ed. 123; *United States v. Schurz*, 102 U. S. 395, 26 L. ed. 167, 219; *United States ex rel. v. Block*, 128 U. S. 48, 9 S. Ct. 14, 32 L. ed. 354; *Noble v. Union etc. R. R. Co.*, 147 U. S. 171, 13 S. Ct. 272, 37 L. ed. 123; *Hoover v. McChesney*, 81 Fed. 482; *Dudley v. James*, 83 Fed. 345, 347.

¹³ *Marbury v. Madison*, 1 Cr. 169, 2 L. ed. 60; *Foster v. Neilson*, 2 Pet. 307, 7 L. ed. 415; *Craig v. Missouri*, 4 Pet. 438, 7 L. ed. 903; *In re Baiz*, 135 U. S. 142, 10 S. Ct. 854, 34 L. ed. 222; *In re Cooper*, 143 U. S. 503, 12 S. Ct. 453, 36 L. ed. 232.

¹⁴ *United States v. Blaine*, 139 U. S. 326, 11 S. Ct. 607, 35 L. ed. 183.

¹⁵ *United States v. Holiday*, 3 Wall. 419, 18 L. ed. 182.

¹⁶ *In re Baiz*, 135 U. S. 142, 10 S. Ct. 854, 34 L. ed. 222.

¹⁷ *More v. Steinbach*, 127 U. S. 80, 8 S. Ct. 1067, 32 L. ed. 51.

constitution or an amendment thereof has been ratified by the people;¹⁸ whether military authority has been established;¹⁹ how long military occupation of territory shall be necessary;²⁰ the question as to the existence of a treaty;²¹ the recognition of sovereignty and of foreign states;²² the determination of disputed boundaries between the United States and a foreign nation;²³ the regulation of the admission of foreigners.²⁴

It is the duty of the President to see that the laws are faithfully executed, and injunction will not lie to prevent him or his officers from enforcing them.²⁵ The enforcement of the constitutional guaranty of a republican form of government belongs to the political department.²⁶ The obligation conferred upon the President to see the laws faithfully executed does not confer any power to forbid their execution.²⁷

Congress may authorize the President to restrict or regulate the introduction of merchandise into a territory under such penalties as may be prescribed by Congress;²⁸ but he has no common-law authority to interdict commercial intercourse with any nation, or revive any act whose operation has ex-

18 *Luther v. Borden*, 7 How. 39, 12 L. ed. 581.

19 *Keely v. Sanders*, 99 U. S. 446, 25 L. ed. 327.

20 *Neely v. Henkel*, 180 U. S. 124, 21 S. Ct. 302, 45 L. ed. 448.

21 *Terlinden v. Ames*, 184 U. S. 288, 22 S. Ct. 484, 46 L. ed. 534.

22 *United States v. Palmer*, 3 Wheat. 634, 4 L. ed. 471; *The Divina Pastora*, 4 Wheat. 63, 4 L. ed. 512; *The Santissima Trinidad*, 7 Wheat. 283, 5 L. ed. 454; *Williams v. Suffolk Ins. Co.*, 13 Pet. 420, 10 L. ed. 226; *Kennett v. Chambers*, 14 How. 50, 14 L. ed. 316; *United States v. Yorba*, 1 Wall. 423, 17 L. ed. 635; *Phillips v. Payne*, 92 U. S. 132, 23 L. ed. 649; *Jones v. United States*, 137 U. S. 212, 34 L. ed. 691.

23 *De La Croix v. Chamberlain*, 12 Wheat. 600, 6 L. ed. 741; *Forster v. Neilson*, 2 Pet. 307, 7 L. ed. 415; *Garcia v. Lee*, 12 Pet. 516, 9 L. ed. 1176; *United States v. Reynes*, 9 How. 154, 13 L. ed. 74.

24 *Ekin v. United States*, 142 U. S. 660, 35 L. ed. 1146; *Fong Yue Ting v. United States*, 149 U. S. 712, 13 S. Ct. 1016, 37 L. ed. 905.

25 *Mississippi v. Johnson*, 4 Wall. 500, 501, 18 L. ed. 437; *Georgia v. Stanton*, 6 Wall. 77, 18 L. ed. 721.

26 *Taylor v. Beckham*, 178 U. S. 578, 20 S. Ct. 1009, 44 L. ed. 1187.

27 *Kendall v. United States*, 12 Pet. 613, 9 L. ed. 1181.

28 *The Louisa Simpson*, 2 Saw. 57, Fed. Cas. No. 8533.

pired.²⁹ So, also, under an act of Congress the President may order the discharge upon proper terms and conditions of a debtor imprisoned at the suit of the government.³⁰ While Congress cannot delegate to the President power to make a law, with discretion as to what it shall be, yet it may confer upon him authority or discretion as to its execution to be exercised in pursuance of its provisions.³¹ Thus a provision authorizing the President to suspend the provisions of a tariff act is unobjectionable;³² and this is true of an act regulating the manufacture of oleomargarine and authorizing the commissioner of internal revenue to make regulations concerning marks and brands.³³ A question not necessarily judicial may, by statute, be submitted to executive officers,³⁴ and the President may be authorized to suspend the writ of habeas corpus when, in his judgment, the public safety so requires.³⁵ If the President assumes powers which should have the authorization or sanction of Congress, a ratification cures the defect.³⁶ Congress may impose on an executive officer any duty which is not repugnant to any right secured and protected by the constitution.³⁷

²⁹ *The Orono*, 1 Gall. 137, Fed. Cas. No. 10,585.

³⁰ *United States v. Ringgold*, 8 Pet. 164, 8 L. ed. 899.

³¹ *Field v. Clark*, 143 U. S. 693, 12 S. Ct. 495, 36 L. ed. 294; *St. Louis Coal Co. v. Illinois*, 185 U. S. 211, 46 L. ed. 872.

³² *Field v. Clark*, 143 U. S. 694, 12 S. Ct. 495, 36 L. ed. 294.

³³ *In re Kollock*, 165 U. S. 536, 17 S. Ct. 444, 41 L. ed. 813.

³⁴ *Fong Yue Ting v. United States*, 149 U. S. 714, 13 S. Ct. 1016, 37 L. ed. 905.

³⁵ *McCall v. McDowell, Dady*, 233, 1 Abb. U. S. 212, Fed. Cas. No. 8673; *In re Oliver*, 17 Wis. 681.

³⁶ *Prize Cases*, 2 Black, 670, 17 L. ed. 459; *The Francis Hatch*, 25 Fed. Cas. 1204.

³⁷ *Marbury v. Madison*, 1 Cr. 169, 2 L. ed. 60; *Kendall v. United States*, 12 Pet. 610, 9 L. ed. 1181.

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors, Appointment of.

While the power to appoint to the office of elector of President and Vice-President is vested in the states, the franchises and privileges of the office originate and are exercised under the constitution and laws of the United States, and not those of the states,¹ and a state law directing the manner of appointment of electors has its authority solely from the constitution.² The word "appoint" is here used in its broadest sense, and is sufficiently comprehensive to cover the result of a popular election; under this clause the appointment may be made by the legislature directly, by popular vote in districts, or by election on a general ticket.³ A person disqualified as an elector by holding "an office of trust or profit under the United States" cannot remove the disqualification by resigning the office unless such resignation precedes his appointment. The office of a commissioner of the United States Centennial Commission is an office of trust within this clause.⁴ Presidential electors are not officers or agents of the United States.⁵ They have been held to be state officers within the provisions of a statute as to unexpired terms.⁶

¹ *State v. Bowen*, 8 S. C. 400.

² *Ex parte Hayne*, 1 Hughes, 571, Fed. Cas. No. 4336.

³ *McPherson v. Blacker*, 146 U. S. 27, 13 S. Ct. 10, 36 L. ed. 869, affirming 92 Mich. 390, 31 Am. St. Rep. 596, 32 N. W. 473, 16 L. R. A. 475.

⁴ *In re Corliss*, 11 R. I. 638, 23 Am. Dec. 538.

⁵ *In re Green*, 134 U. S. 379, 10 S. Ct. 586, 33 L. ed. 951.

⁶ *Todd v. Johnson*, 99 Ky. 554, 36 S. W. 989.

3. [The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

Superseded by XIIth Amendment.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Power of Congress.

The appointment of electors and the mode thereof belong exclusively to the states; but the time of choosing them and the day upon which they are to give their votes is determinable by Congress.¹ This clause and that in the twelfth amendment relative to the opening of the vote confer upon Congress the only powers it possesses with relation to the appointment of electors.² Where a state law fixes a date for the meeting of presidential electors different from that provided by Congress, if that provision is separable it may be rejected and the act remain otherwise valid.³ The states have power to punish for illegal voting for presidential electors.⁴

¹ *McPherson v. Blacker*, 146 U. S. 35, 13 S. Ct. 10, 36 L. ed. 867, affirming 92 Mich. 390, 31 Am. St. Rep. 596, 32 N. W. 473, 16 L. R. A. 475.

² *In re Green*, 134 U. S. 379, 10 S. Ct. 586, 33 L. ed. 951.

³ *McPherson v. Blacker*, 146 U. S. 41, 13 S. Ct. 10, 36 L. ed. 869.

⁴ *In re Green*, 134 U. S. 380, 10 S. Ct. 586, 33 L. ed. 951; *Mason v. State*, 55 Ark. 535, 18 S. W. 829.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Oath.

The President is the only officer required to take this oath.¹ By it the President simply obligates himself to obey the constitution and to use the power which it confers on him to cause

¹ *Metropolitan Bank v. Van Dyck*, 27 N. Y. 400.

others to obey it.² The oath gives to the President no additional powers.^{2a} It becomes his duty to see that the laws are faithfully executed.³ and his obligation conveys no power to forbid their execution.⁴

² *Griffin v. Wilcox*, 21 Ind. 370.

^{2a} *In re Kemp*, 16 Wis. 359.

³ *Mississippi v. Johnson*, 4 Wall. 500, 18 L. ed. 437; *Georgia v. Stanton*, 6 Wall. 77, 18 L. ed. 721.

⁴ *Kendall v. United States*, 12 Pet. 613, 9 L. ed. 1181.

SECTION 2.

OTHER POWERS AND DUTIES

1. Act as Commander-in-Chief. Reprieves, pardons.
2. To make treaties, how. Appointments.
3. To fill vacancies.

1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Commander-in-Chief.

As commander-in-chief the President is authorized to direct the movements of the naval and military forces placed under his command, and to employ them in a manner which he may deem most effectual for the purposes for which they exist.¹ By virtue of this position he has undoubted power to establish rules and regulations for the government of the army and navy, or may modify or repeal or create them anew,² and such rules and regulations cannot be questioned or defied on the ground that they are unwise.³ Army and navy regulations made pursuant to the authority conferred upon the President have the

¹ *Fleming v. Page*, 9 How. 603, 13 L. ed. 276.

² *United States v. Eliason*, 16 Pet. 302, 10 L. ed. 968; *Kurtz v. Moffitt*, 115 U. S. 503, 6 S. Ct. 148, 29 L. ed. 458; *United States v. Webster*, 2 Ware (Dav.), 46, Fed. Cas. No. 16,658; *In re Griner*, 16 Wis. 423.

³ *United States v. Eliason*, 16 Pet. 302, 10 L. ed. 968.

force of law.⁴ When promulgated through the Secretary of War they must be received as the acts of the President, and as such are binding on all within the sphere of his authority.⁵

The power of the President as commander-in-chief must be exercised in accordance with the laws and usages of nations,⁶ and in the manner prescribed by the legislative department;⁷ otherwise his orders will afford no protection to an officer acting under them.⁸ So an instruction to an officer cannot justify an act which, without it, would have been a trespass.⁹ The President is bound to respect the right of the states to appoint militia officers expressly reserved to them by the constitution.¹⁰

He is authorized by law, previous to a declaration of war by Congress, to meet insurrection or invasion by military force.¹¹ He may, *jure belli*, declare a blockade of hostile ports in a civil war as well as a foreign war,¹² or may employ secret agents to enter the enemy's lines to obtain information regarding the latter's strength, resources and movements, and direct payment therefor out of the contingent fund,¹³ and if money is advanced by the direction of the head of the proper depart-

⁴ *United States v. Freeman*, 3 How. 537, 11 L. ed. 724; *Gratiet v. United States*, 4 How. 117, 11 L. ed. 884; *Ex parte Reed*, 100 U. S. 22, 25 L. ed. 538; *Smith v. Whitney*, 116 U. S. 118, 6 S. Ct. 570, 29 L. ed. 601; *Moses v. United States*, 116 Fed. 526.

⁵ *United States v. Eliason*, 16 Pet. 302, 10 L. ed. 968; *The Confiscation Cases*, 20 Wall. 109, 22 L. ed. 320; *Kurtz v. Moffitt*, 115 U. S. 503, 6 S. Ct. 148, 29 L. ed. 458; *Johnson v. Sayre*, 158 U. S. 114, 15 S. Ct. 773, 39 L. ed. 914.

⁶ *Otis v. Bacon*, 7 Cr. 589, 3 L. ed. 448; *Tracy v. Swartwout*, 10 Pet. 80, 9 L. ed. 354; *Ex parte Milligan*, 4 Wall. 2, 18 L. ed. 281.

⁷ *Little v. Barreme*, 2 Cr. 170, 2 L. ed. 243.

⁸ *Little v. Barreme*, 2 Cr. 179, 2 L. ed. 243; *In re Cooper*, 143 U. S. 500, 12 S. Ct. 459, 36 L. ed. 232; *Belknap v. Schild*, 161 U. S. 18, 16 S. Ct. 445, 40 L. ed. 599.

⁹ *Little v. Barreme*, 2 Cr. 179, 2 L. ed. 243.

¹⁰ *Anonymous*, 2 Opin. Atty. Gen. 711.

¹¹ *Prize Cases*, 2 Black, 668, 17 L. ed. 459; *Mathews v. McSteen*, 91 U. S. 12, 22 L. ed. 448.

¹² *Prize Cases*, 2 Black, 635, 17 L. ed. 459; *The Mary Clinton*, Blatchf. Pr. 558.

¹³ *Totten v. United States*, 92 U. S. 107, 23 L. ed. 605.

ment, the order of the President will be presumed.¹⁴ The President cannot, however, establish a prize court, or confer power to condemn prizes upon any inferior officer, civil or military.¹⁵ In case of insurrection he may accord to the enemy the character of belligerents.¹⁶ The President has a discretionary power to allow such additional rations to officers commanding separate posts as he may deem just, having respect to the special circumstances of each post.¹⁷ The War Department, in procuring army supplies, may purchase hogs and employ men to slaughter them.¹⁸ The propriety of detailing a naval officer on special duty in France, of furnishing him with medical attendance, and ratifying his act in employing a physician, are matters peculiarly within executive discretion.¹⁹

The power to call out the militia is vested in Congress by article I, section 8, clause 15, but may be, and has been delegated to the President,²⁰ together with the authority to determine exclusively when the exigency demanding such action has arisen.²¹ Whenever the law gives a discretionary power to any person to be exercised upon his own opinion of the facts, he is to be considered the sole and exclusive judge of the existence of those facts,²² and the President's decision as to the necessity for a call for the militia is conclusive upon all other persons and all other departments of government.²³ The

¹⁴ *United States v. Cutter*, 2 Curt. 617, Fed. Cas. No. 14,911.

¹⁵ *Jecker v. Montgomery*, 13 How. 515, 14 L. ed. 240.

¹⁶ *Prize Cases*, 2 Black, 668, 17 L. ed. 459.

¹⁷ *Parker v. United States*, 1 Pet. 296, 7 L. ed. 150.

¹⁸ *United States v. Speed*, 8 Wall. 82, 19 L. ed. 449.

¹⁹ *United States v. Jones*, 18 How. 96, 15 L. ed. 274.

²⁰ *American Ins. Co. v. Cotton*, 1 Pet. 542, 7 L. ed. 242; *Martin v. Mott*, 12 Wheat. 19, 6 L. ed. 537.

²¹ *Martin v. Mott*, 12 Wheat. 29, 6 L. ed. 537; *Prize Cases*, 2 Black, 670, 17 L. ed. 459; *McCall v. McDowell*, 1 Abb. U. S. 219, Deady, 233, Fed. Cas. No. 8673; *Dreucker v. Salomon*, 21 Wis. 621.

²² *Martin v. Mott*, 12 Wheat. 31, 6 L. ed. 537; *Luther v. Borden*, 7 How. 43, 45, 12 L. ed. 581; *Ex parte Field*, 5 Blatchf. 80, Fed. Cas. No. 4761.

²³ *United States v. Cruikshank*, 92 U. S. 556, 23 L. ed. 588.

President may call forth the militia to suppress an insurrection upon the application of a state.²⁴

Conquest and Government of Conquered Territory.

In his capacity as commander-in-chief, the President may order the invasion of the enemy's territory; but such conquests cannot enlarge the boundaries of the Union.²⁵ According to the usages of nations, if a nation be not entirely subdued by another, the holding of conquered territory is to be deemed a mere military occupation until its status is determined by the treaty of peace,²⁶ and the military may hold and occupy conquered territory without incorporation so long as it may seem appropriate to Congress.²⁷ Where territory is ceded by a treaty of peace the occupation is confirmed,²⁸ but the territory thus acquired becomes appurtenant to and not a part of the United States; actual incorporation as a part of the nation can follow only after the action of Congress.²⁹

It is the duty of the President so long as war continues to provide for the security of persons and property in territory taken from the enemy's control,³⁰ and to this end he may institute a temporary military government,³¹ which will continue to be a valid government until the ratification of a treaty of peace and the provision by Congress for the formation of another government.³² The establishment of provisional courts is a part of this power,³³ as also is the collection of duties in

²⁴ *Luther v. Borden*, 7 How. 43, 12 L. ed. 581; *United States v. Cruikshank*, 92 U. S. 556, 23 L. ed. 588.

²⁵ *Fleming v. Page*, 9 How. 615, 13 L. ed. 276; *New Orleans v. Steamship Co.*, 20 Wall. 398, 22 L. ed. 354.

²⁶ *American Ins. Co. v. Cotton*, 1 Pet. 542, 7 L. ed. 242. And see *United States v. Huckabee*, 16 Wall. 434, 21 L. ed. 457.

²⁷ *Downes v. Bidwell*, 182 U. S. 342, 21 S. Ct. 783, 45 L. ed. 1089.

²⁸ *American Ins. Co. v. Cotton*, 1 Pet. 542, 7 L. ed. 242.

²⁹ *Downes v. Bidwell*, 182 U. S. 342, 21 S. Ct. 783, 45 L. ed. 1089.

³⁰ *The Grapeshot*, 9 Wall. 132, 19 L. ed. 651; *Texas v. White*, 7 Wall. 730, 19 L. ed. 227.

³¹ *Texas v. White*, 7 Wall. 730, 19 L. ed. 227.

³² *Cross v. Harrison*, 16 How. 191, 14 L. ed. 889.

³³ *The Grapeshot*, 9 Wall. 132, 19 L. ed. 651; *Burke v. Miltenberger*, 19 Wall. 525, 22 L. ed. 158; *Mechanics' etc. Bank v. Union Bank*, 22

the conquered territory.³⁴ The power must be exercised in subordination to the constitution.³⁵ It does not extend to the repeal or contradiction of existing statutes or to the making of provisions of a legislative nature.³⁶

In all cases of conquest among civilized countries, having established laws of property, laws, usages and municipal regulations remain in force until changed by the new sovereign,³⁷ and where neither the President nor Congress dissolves the civil government established in the exercise of provisional rights the inference is that it was intended to be continued.³⁸ Rights of property of persons in conquered territory must remain unimpaired.³⁹ So, also, private relations continue in force except so far as they conflict with the constitution.⁴⁰

When a state government is overthrown by rebellion, the President, on obtaining possession of the territory, may appoint a military governor,⁴¹ and all of his powers may be delegated to such governor.⁴² A military governor's authority is absolute as regards administration, and his legislative powers are limited by strict necessity.⁴³ He may create courts for the

Wall. 296, 22 L. ed. 871; *Lewis v. Cocks*, 23 Wall. 469, 23 L. ed. 70; *Kimball v. Taylor*, 2 Woods, 37, Fed. Cas. No. 7775; *United States v. Reiter*, 27 Fed. Cas. 772; *Armistead v. State*, 43 Ala. 340; *Hefferman v. Porter*, 6 Cold. 396, 98 Am. Dec. 462.

³⁴ *Cross v. Harrison*, 16 How. 164, 14 L. ed. 889; *Downes v. Bidwell*, 182 U. S. 346, 21 S. Ct. 783, 45 L. ed. 1088.

³⁵ *Scott v. Bilgerry*, 40 Miss. 119.

³⁶ 6 Opin. Atty. Gen. 10.

³⁷ *United States v. Powers' Heirs*, 11 How. 577, 13 L. ed. 817; *Coleman v. Tennessee*, 97 U. S. 517, 24 L. ed. 1118; *Ketchum v. Buckley*, 99 U. S. 190, 25 L. ed. 473.

³⁸ *Cross v. Harrison*, 16 How. 191, 14 L. ed. 889.

³⁹ *Johnson v. McIntosh*, 8 Wheat. 589, 5 L. ed. 681; *Leitensdorfer v. Webb*, 20 How. 177, 15 L. ed. 891; *United States v. Repentigny*, 5 Wall. 260, 18 L. ed. 627.

⁴⁰ *Leitensdorfer v. Webb*, 20 How. 177, 15 L. ed. 891.

⁴¹ *Texas v. White*, 7 Wall. 730, 19 L. ed. 227; *Mechanics' etc. Bank v. Union Bank*, 22 Wall. 296, 22 L. ed. 871; *Rutledge v. Fogg*, 3 Cold. 554, 91 Am. Dec. 299.

⁴² *Scott v. Bilgerry*, 40 Miss. 119.

⁴³ *Dooley v. United States*, 182 U. S. 234, 21 S. Ct. 762, 45 L. ed.

administration of justice,⁴⁴ and may appoint judges with authority to hold such courts.⁴⁵ The appointment of a provisional judge is subject to revocation by the governor or his successor, and his judicial authority ceases when the necessity for it ceases.⁴⁶ A commandant cannot annul a decree of a court within its jurisdiction.⁴⁷ The ordinances of a provisional government supersede institutions of the conquered territory which are incompatible with them, and the authority of that government does not cease until terminated by direct legislation.⁴⁸ The President may adopt means to enable the people in a seceding state which has been subdued by conquest to meet in convention for the formation of a new state government.⁴⁹

It is for the political department alone to say how long military occupation shall be necessary; the courts cannot determine that question.⁵⁰

Martial Law.*

Martial law is the law of military necessity in the actual presence of war;⁵¹ it is the law of force applied where civil law is suspended by force,⁵² and finds its justification only where, from actual invasion or civil war, the courts are closed and it is impossible to administer justice according to law.⁵³

1074; *Armstrong v. United States*, 182 U. S. 243, 21 S. Ct. 827, 45 L. ed. 1086.

⁴⁴ *Pennywit v. Eaton*, 15 Wall. 384, 21 L. ed. 114; *Mechanics' etc. Bank v. Union Bank*, 22 Wall. 296, 22 L. ed. 871.

⁴⁵ *Pennywit v. Eaton*, 15 Wall. 384, 21 L. ed. 114; *Mechanics' etc. Bank v. Union Bank*, 22 Wall. 297, 22 L. ed. 871.

⁴⁶ *Handlin v. Wickliffe*, 12 Wall. 175, 20 L. ed. 365.

⁴⁷ *Raymond v. Thomas*, 91 U. S. 716, 23 L. ed. 434.

⁴⁸ *Leitensdorfer v. Webb*, 20 How. 176, 15 L. ed. 891.

⁴⁹ *Ex parte Hughes*, Phill. (N. C.) 57.

⁵⁰ *Neely v. Henkel*, 180 U. S. 124, 21 S. Ct. 302, 45 L. ed. 448.

⁵¹ *United States v. Diekelman*, 92 U. S. 526, 23 L. ed. 742; *Grove v. Mott*, 46 N. J. L. 328, 50 Am. Dec. 424.

⁵² *Griffin v. Wilcox*, 21 Ind. 370.

⁵³ *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281; *Winter v. Dickerson*, 42 Ala. 98; *Johnson v. Jones*, 44 Ill. 142; *Skeen v. Monkheimer*,

* See, also, art. I, § 9, cl. 2.

It exists only in case of necessity,⁵⁴ and its duration is limited by its necessity.⁵⁵ It cannot arise from threatened invasion,⁵⁶ but from the fact of the existence of invasion or immediately impending force at a given place and time.⁵⁷ It is limited to those places within the theater of war, or its vicinity⁵⁸—the precise limits to be determined according to the circumstances of each case.⁵⁹

The recognition of the existence of a state of affairs necessitating martial law is a part of the war power of the President,⁶⁰ and it is for him to determine when, in case of insurrection, the United States should interfere.⁶¹ After the insurrection is suppressed and a provisional government established, and a state constitution adopted, a citizen cannot be tried in a military court for an alleged crime.⁶² During the Rebellion the President had no power to arrest and imprison any person not subject to military law without process of a court;⁶³ but a general order of the President authorizing the arrest of persons absenting themselves to avoid draft was valid.⁶⁴ When, during the Civil War, the United States forces were in the enemy's country, military tribunals had exclusive jurisdiction to try and punish offenses of every grade committed by persons in the military service;⁶⁵ but the military commission was without jurisdiction to try and sentence a person not a member of the military or naval forces, and who at the time of his

21 Ind. 1; *Griffin v. Wilcox*, 21 Ind. 370; *Grove v. Mott*, 46 N. J. L. 328, 50 Am. Dec. 424; *In re Kemp*, 16 Wis. 359.

⁵⁴ *Ex parte Eagan*, 5 Blatchf. 319.

⁵⁵ *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281.

⁵⁶ *Ex parte Milligan*, 4 Wall. 127, 18 L. ed. 281.

⁵⁷ *Griffin v. Wilcox*, 21 Ind. 370.

⁵⁸ *Ex parte Milligan*, 4 Wall. 120, 18 L. ed. 281; *Jones v. Seward*, 40 Barb. 563; *In re Kemp*, 16 Wis. 359.

⁵⁹ *In re Kemp*, 16 Wis. 359.

⁶⁰ *Griffin v. Wilcox*, 21 Ind. 370.

⁶¹ *Luther v. Borden*, 7 How. 43, 12 L. ed. 581.

⁶² *Ex parte Eagan*, 5 Blatchf. 319.

⁶³ *Jones v. Seward*, 40 Barb. 563.

⁶⁴ *Allen v. Colby*, 47 N. H. 544.

⁶⁵ *Coleman v. Tennessee*, 97 U. S. 515, 24 L. ed. 1118.

arrest was a resident of a loyal state where the courts were open.⁶⁶ The state courts have no authority by habeas corpus over persons held by the authority of the United States.⁶⁷

The Power to Pardon.

A pardon is an act of grace, proceeding from the executive, exempting the person pardoned from the punishment which the law inflicts for the crime he has committed.⁶⁸ The supreme court adopts the English principles regarding the operation and effect of a pardon,⁶⁹ and the word "pardon" as used in this clause must be given the same meaning as prevailed in the United States and England at the time the constitution was adopted.⁷⁰ There is no legal distinction between the terms "amnesty" and "pardon,"⁷¹ and the phrase "to grant reprieves and pardons" includes the right to grant amnesty.⁷² The President in the exercise of his power to pardon may act immediately or may first refer cases to the executive departments.⁷³

The power to grant reprieves and pardons, except in cases of impeachment, is unlimited, and is not subject to the control of Congress in any way.⁷⁴ It is vested exclusively in the

⁶⁶ *Ex parte Milligan*, 4 Wall. 130, 18 L. ed. 281.

⁶⁷ *Tarble's Case*, 13 Wall. 397, 20 L. ed. 597.

⁶⁸ *United States v. Wilson*, 7 Pet. 160, 8 L. ed. 640; *Boyd v. United States*, 142 U. S. 454, 12 S. Ct. 294, 35 L. ed. 1077; *In re Greathouse*, 4 Saw. 499, Abb. U. S. 382, Fed. Cas. No. 5741; *Singleton v. State*, 38 Fla. 300, 21 South. 22, 56 Am. St. Rep. 179, 34 L. R. A. 251; *Easterwood v. State*, 34 Tex. Cr. 409, 31 S. W. 296.

⁶⁹ *United States v. Wilson*, 7 Pet. 160, 8 L. ed. 640; *United States v. Harris*, 1 Abb. U. S. 114, Fed. Cas. No. 15,312.

⁷⁰ *Ex parte Wells*, 18 How. 311, 15 L. ed. 421; *United States v. Athens Armory*, 2 Abb. U. S. 150, 35 Ga. 344, Fed. Cas. No. 14,473; *Pollock v. Steamboat Laura*, 5 Fed. 136; *People v. Bowen*, 3 Cal. 442, 13 Am. Rep. 150.

⁷¹ *Knote v. United States*, 95 U. S. 152, 24 L. ed. 442; *Brown v. Walker*, 161 U. S. 601, 16 S. Ct. 643, 40 L. ed. 819.

⁷² *United States v. Klein*, 13 Wall. 142, 20 L. ed. 519.

⁷³ *Anonymous*, 14 Opin. Atty. Gen. 20.

⁷⁴ *Ex parte Garland*, 4 Wall. 380, 18 L. ed. 366.

President⁷⁵ and continues so long as any legal consequences of the offense remain,⁷⁶ and an act which impairs the effect of a pardon by the President is void.⁷⁷ Congress cannot provide for the remission of penalties by the Secretary of the Treasury.⁷⁸ The power may be exercised as well before trial as after conviction,⁷⁹ or after expiration of part of the sentence,⁸⁰ and includes the power to commute the sentence.⁸¹ The power extends to all kinds of pardons known to the law as such,⁸² either general, special or particular, conditional or absolute, or statutory, not necessary in some cases, and in some grantable of course.⁸³ Being an act of grace, limitations should be strictly construed.⁸⁴ The President has no power to relieve from imprisonment judges of a county court who have been committed for contempt for refusing to obey a mandamus directed against them.⁸⁵

A person receiving full pardon for his acts is not to be excluded from any rights or privileges or subjected to any punishment for such acts, and so cannot be affected by any act of Congress having such a purpose.⁸⁶ While, however, this power of the President is exclusive, and not to be restricted by Congress,⁸⁷ yet it does not preclude the passage by Congress of an act of general amnesty.⁸⁸ A pardon for participating in Re-

⁷⁵ *United States v. Klein*, 13 Wall. 147, 20 L. ed. 519.

⁷⁶ *Stetler's Case*, Phill. (N. C.) 302.

⁷⁷ *Klein's Case*, 7 Ct. of Cl. 240; *Witkowski's Case*, 7 Ct. of Cl. 393.

⁷⁸ *The Laura*, 114 U. S. 414, 5 S. Ct. 881, 29 L. ed. 147.

⁷⁹ *Anonymous*, 6 Opin. Atty. Gen. 20.

⁸⁰ *Stetler's Case*, Phill. (N. C.) 302.

⁸¹ *Ex parte Wells*, 18 How. 309, 15 L. ed. 421.

⁸² *Ex parte Wells*, 18 How. 311, 15 L. ed. 421; *Ex parte Garland*, 4 Wall. 380, 18 L. ed. 366.

⁸³ *Ex parte Garland*, 4 Wall. 380, 18 L. ed. 366; *United States v. Padelford*, 9 Wall. 542, 19 L. ed. 788.

⁸⁴ *Osborn v. United States*, 91 U. S. 478, 23 L. ed. 388.

⁸⁵ *In re Nevitt*, 117 Fed. 622.

⁸⁶ *Ex parte Garland*, 4 Wall. 381, 18 L. ed. 366.

⁸⁷ *Ex parte Garland*, 4 Wall. 380, 18 L. ed. 366; *United States v. Klein*, 13 Wall. 128, 20 L. ed. 519.

⁸⁸ *Brown v. Walker*, 161 U. S. 601, 16 S. Ct. 648, 40 L. ed. 819.

billion does not authorize the payment of a claim which Congress has forbidden.⁸⁹

A pardon may be absolute or conditional,⁹⁰ or it may be special and subject to exceptions.⁹¹ A pardon granted on conditions blots out the offense on proof of compliance with the conditions.⁹² The acceptance by a convict condemned to death of a pardon conditioned on life imprisonment is binding,⁹³ and it cannot be avoided on the ground that it was obtained by duress.⁹⁴ A pardon conditioned that recipient shall claim no property, or proceeds, sold by a court under confiscation proceedings does not preclude a claim for the proceeds of a mortgage on bonds paid into court.⁹⁵

— Effect of Pardon.

A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance,⁹⁶ and a pardon by an outgoing President may be revoked by his successor before delivery.⁹⁷ The effect of a pardon is such that in law the offender is as innocent as if he had never committed the offense;⁹⁸ in legal contemplation it obliterates the offense.⁹⁹ The power to pardon carries with it power to release from fines, penalties and forfeitures accruing from the

⁸⁹ *Hart v. United States*, 118 U. S. 65, 6 S. Ct. 961, 30 L. ed. 916.

⁹⁰ *United States v. Wilson*, 7 Pet. 161, 8 L. ed. 640; *Ex parte Hunt*, 10 Ark. 288; *Ex parte Hawkins*, 61 Ark. 324, 54 Am. St. Rep. 210, 33 S. W. 106, 30 L. R. A. 736.

⁹¹ *Semmes v. United States*, 91 U. S. 27, 23 L. ed. 193.

⁹² *United States v. Klein*, 13 Wall. 142, 20 L. ed. 519.

⁹³ *In re Ross*, 140 U. S. 480, 11 S. Ct. 897, 35 L. ed. 581.

⁹⁴ *Ex parte Wells*, 18 How. 315, 15 L. ed. 421.

⁹⁵ *Osborn v. United States*, 91 U. S. 477, 23 L. ed. 388.

⁹⁶ *United States v. Wilson*, 7 Pet. 161, 8 L. ed. 640. See *Ex parte Powell*, 73 Ala. 519, 49 Am. Rep. 73, where delivery to warden was held to be delivery to prisoner.

⁹⁷ *In re Du Puy*, 3 Ben. 316.

⁹⁸ *United States v. Padelford*, 9 Wall. 542, 19 L. ed. 788.

⁹⁹ *Carlisle v. United States*, 16 Wall. 151, 21 L. ed. 426; *Ex parte Garland*, 4 Wall. 333, 18 L. ed. 366; *United States v. Klein*, 13 Wall. 128, 20 L. ed. 519.

offense;¹⁰⁰ but a pardon can give no relief for what has already been suffered, and while the executive may restore money in his immediate control, the pardon cannot give any right to proceeds of property already paid into the United States treasury.¹⁰¹

A pardon obliterates the offense and carries a release of penalties so far as is in the power of the government, unless restrained by the instrument of pardon;¹⁰² but it cannot impair the rights of others to the offender's property which has been forfeited.¹⁰³ Nor can a pardon restore a forfeited office.¹⁰⁴ So a general pardon and amnesty does not entitle the recipient to the proceeds of property previously condemned and sold under the confiscation acts;¹⁰⁵ but a person, after pardon, may dispose of the fee remaining in him after the sale of his confiscated life estate.¹⁰⁶ Relief from the payment of taxes assessed for a violation of the revenue laws is not embraced in a general pardon for the offense, nor does it cancel the forfeiture.¹⁰⁷ A pardon does not work a remission of a forfeiture on a bail bond,¹⁰⁸ although the sureties on the bail bond of a party convicted of a violation of the revenue laws are released from further liability by a pardon of their principal.¹⁰⁹

100 *Osborn v. United States*, 91 U. S. 478, 23 L. ed. 388; *United States v. Harris*, 1 Abb. U. S. 114, Fed. Cas. No. 15,312; *United States v. Lancaster*, 4 Wash. C. C. 66, Fed. Cas. No. 15,557; *The Hollen*, 1 Mason, 431, Fed. Cas. No. 6608; *State v. Farley*, 8 Blackf. (Ind.) 229; *State v. Simpson*, 1 Bailey, 378; *In re Flourney*, 1 Kelly (Ga.), 606; *State v. McO'Blenis*, 21 Mo. 272, 69 Am. Dec. 435; *Playford v. Commonwealth*, 4 Pa. St. 144; *State v. Williams*, 1 Nott & McC. 26.

101 *Knote v. United States*, 95 U. S. 154, 24 L. ed. 442; *Fischel v. Mills*, 55 Ark. 346, 18 S. W. 237, 15 L. R. A. 395.

102 *Osborn v. United States*, 91 U. S. 477, 23 L. ed. 388.

103 *Osborn v. United States*, 91 U. S. 477, 23 L. ed. 388; *Knote v. United States*, 95 U. S. 154, 24 L. ed. 442.

104 *Ex parte Garland*, 4 Wall. 381, 18 L. ed. 366.

105 *Knote v. United States*, 95 U. S. 153, 24 L. ed. 442.

106 *Illinois Central R. R. Co. v. Bosworth*, 133 U. S. 104, 10 S. Ct. 234, 33 L. ed. 550.

107 *Ex parte Weimer*, 8 Biss. 325.

108 *Columbian Ins. Co. v. Ashley*, 4 Pet. 144, 7 L. ed. 809.

109 *United States v. Cullerton*, 8 Biss. 171, Fed. Cas. No. 14,899.

A general pardon restores to all civil rights; e. g., competency as a witness;¹¹⁰ competency as a juror;¹¹¹ the right to vote.¹¹² A full pardon removes all disabilities attendant on conviction,¹¹³ and this has been held to be so notwithstanding the pardon was obtained by fraud.¹¹⁴ A pardon removes the record of a felony conviction as the basis of disbarment proceedings against an attorney.¹¹⁵ A conditional pardon does not restore the competency of the person pardoned as a witness.¹¹⁶ The recital in a pardon that it was requested to restore the competency of a person as a witness does not alter the fact that the pardon was, as stated in it, full and unconditional.¹¹⁷ An additional punishment cannot be inflicted for a second offense if the first was pardoned;¹¹⁸ but while the pardon relieves guilt, it does not remove the fact of conviction, which may be shown against character.¹¹⁹ The amnesty proclamation extended to aliens domiciled in the rebel states.¹²⁰

¹¹⁰ *Boyd v. United States*, 142 U. S. 454, 12 S. Ct. 294, 35 L. ed. 1077; *Hunnicut v. State*, 18 Tex. App. 519, 51 Am. Rep. 333; *Singleton v. State*, 38 Fla. 302, 56 Am. St. Rep. 180, 21 South. 22, 34 L. R. A. 251.

¹¹¹ *United States v. Bassetts*, 5 Utah, 133, 13 Pac. 239; *Easterwood v. State*, 34 Tex. Cr. 409, 31 S. W. 296.

¹¹² *Cowan v. Prowse*, 93 Ky. 172, 19 S. W. 411; *Jones v. Board of Registrars*, 56 Miss. 768, 31 Am. Rep. 386.

¹¹³ *Wood v. Fitzgerald*, 3 Or. 576; *Edwards v. Commonwealth*, 78 Va. 42, 49 Am. Rep. 379.

¹¹⁴ *Knapp v. Thomas*, 39 Ohio St. 381, 48 Am. Rep. 462.

¹¹⁵ *Scott v. State*, 6 Tex. Civ. App. 348, 25 S. W. 339. But see *In re Attorney*, 86 N. Y. 569.

¹¹⁶ *Carr v. State*, 19 Tex. App. 660, 53 Am. Rep. 396.

¹¹⁷ *Boyd v. United States*, 142 U. S. 453, 12 S. Ct. 294, 35 L. ed. 1077.

¹¹⁸ *Edwards v. Commonwealth*, 78 Va. 43, 49 Am. Rep. 379.

¹¹⁹ *In re Spenser*, 5 Saw. 199, Fed. Cas. No. 13,234.

¹²⁰ *Carlisle v. United States*, 16 Wall. 148, 21 L. ed. 426.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law or in the heads of departments.

Treaty Power.

A treaty is in the nature of a contract between two nations, to be carried into execution by the sovereign power of the respective parties;¹ but while a treaty is a contract, in the United States it is like an act of Congress, in that the courts must take judicial notice of it.² A treaty is the supreme law of the land,³ and where self-operative is equivalent to an act of the legislature,⁴ and forms a rule of decision in all courts.⁵ The courts of justice must interpret and administer a treaty according to its terms, and they cannot annul or disregard any of

¹ *Foster v. Neilson*, 2 Pet. 314, 7 L. ed. 415; *Goetze v. United States*, 103 Fed. 72.

² *United States v. Rauscher*, 119 U. S. 418, 7 S. Ct. 234, 30 L. ed. 425.

³ *Fairfax v. Hunter*, 7 Cr. 627, 3 L. ed. 453; *American Ins. Co. v. Cotton*, 1 Pet. 543; 7 L. ed. 242; *Chew Heong v. United States*, 112 U. S. 540, 5 S. Ct. 255, 28 L. ed. 770; *In re Cooper*, 143 U. S. 502, 12 S. Ct. 453, 36 L. ed. 232; *Opel v. Shoup*, 100 Iowa, 424, 69 N. W. 563, 37 L. R. A. 583; *Wunderle v. Wunderle*, 144 Ill. 54, 33 N. E. 197; *Succession of Rabasse*, 47 La. Ann. 1452, 49 Am. St. Rep. 433, 17 South. 867.

⁴ *Foster v. Neilson*, 2 Pet. 314, 7 L. ed. 415; *Pollard v. Kibbe*, 14 Pet. 412, 10 L. ed. 490; *United States v. Forty-three Gallons of Whisky*, 93 U. S. 193, 23 L. ed. 846.

⁵ *Strother v. Lucas*, 12 Pet. 439, 9 L. ed. 1137.

its terms;⁶ they must obey its mandates even though litigation already in court is affected and reversal of a judgment below becomes necessary.⁷

The power to make treaties is vested by this clause in the President and Senate,⁸ and extends to the making of treaties on all subjects not inconsistent with the nature of the general government or its relations with the states.⁹ With few exceptions, the power is unlimited, extending to all proper subjects of negotiation,¹⁰ and covering all the usual subjects of diplomacy with different powers;¹¹ e. g., the acquisition of property belonging to the citizens of each in the territory of the other;¹² provision for inheritance by aliens;¹³ the establishment of consular tribunals;¹⁴ the acquisition of territory;¹⁵ the settlement of boundaries;¹⁶ the granting and acceptance of awards for injuries committed;¹⁷ the conferring of citizenship on Indians.¹⁸ The power to make treaties is plenary.¹⁹

⁶ *Doe v. Braden*, 16 How. 657, 14 L. ed. 1090.

⁷ *United States v. Schooner Peggy*, 1 Cr. 109, 2 L. ed. 49; *Martin v. Hunter*, 1 Wheat. 370, 4 L. ed. 97.

⁸ *New York Indians v. United States*, 170 U. S. 23, 18 S. Ct. 531, 42 L. ed. 427.

⁹ *Holden v. Joy*, 17 Wall. 243, 21 L. ed. 523.

¹⁰ *Geofroy v. Riggs*, 133 U. S. 266, 10 S. Ct. 295, 33 L. ed. 642.

¹¹ *United States v. Forty-three Gallons of Whisky*, 93 U. S. 197, 23 L. ed. 846.

¹² *United States v. Forty-three Gallons of Whisky*, 93 U. S. 197, 23 L. ed. 846.

¹³ *Geofroy v. Riggs*, 133 U. S. 266, 10 S. Ct. 295, 33 L. ed. 642; *Bohuand v. Bize*, 105 Fed. 485.

¹⁴ *In re Ross*, 140 U. S. 463, 11 S. Ct. 897, 35 L. ed. 581.

¹⁵ *American Ins. Co. v. Cotton*, 1 Pet. 511, 7 L. ed. 242; *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691; *Holden v. Joy*, 17 Wall. 247, 21 L. ed. 523; *De Lima v. Bidwell*, 182 U. S. 197, 21 S. Ct. 743, 45 L. ed. 1041; *Fourteen Diamond Rings v. United States*, 133 U. S. 181, 22 S. Ct. 50, 46 L. ed. 138; *Downes v. Bidwell*, 182 U. S. 341, 21 S. Ct. 770, 45 L. ed. 1088.

¹⁶ *Garcia v. Lee*, 12 Pet. 515, 9 L. ed. 1176; *Rhode Island v. Massachusetts*, 12 Pet. 725, 9 L. ed. 1233; *United States v. Texas*, 162 U. S. 38, 16 S. Ct. 725, 40 L. ed. 867.

¹⁷ *Frevail v. Bache*, 14 Pet. 97, 10 L. ed. 369; *United States v.*

The recognition and enforcement of the principles of public law are the ordinary subjects of treaties,²⁰ but the political rights of the people of the several states, as such are not the subject of treaty stipulations.²¹ A treaty enabling aliens to purchase and hold lands is valid.²² A judicial system may be created by treaty.²³ While Indian tribes are not to be considered as foreign nations,²⁴ they are to be deemed alien, autonomous bodies for the purpose of negotiations with the United States by treaty.²⁵

By this clause the President is made the only legitimate agent of the government to open and carry on correspondence with foreign nations in matters concerning the interests of the country or its citizens and this duty is in his discretion.²⁶ So citizens abroad must look to the President for protection or relief.²⁷ A treaty cannot, however, deprive Congress of any part of its legislative power,²⁸ and while a treaty may supersede

Weld, 127 U. S. 57, 8 S. Ct. 1000, 32 L. ed. 62; *Bachman v. Lawson*, 109 U. S. 660, 3 S. Ct. 479, 27 L. ed. 1067.

¹⁸ *Cross v. Harrison*, 16 How. 164, 14 L. ed. 889; *United States v. Rhodes*, 1 Abb. U. S. 43, Fed. Cas. No. 16,151.

¹⁹ *Holmes v. Jennison*, 14 Pet. 540, 10 L. ed. 579; *United States v. Forty-three Gallons of Whisky*, 93 U. S. 188, 23 L. ed. 846; *People v. Gerke*, 5 Cal. 381.

²⁰ *People v. Curtis*, 50 N. Y. 321, 10 Am. Rep. 483.

²¹ *License Cases*, 5 How. 504, 12 L. ed. 256.

²² *Chirac v. Chirac*, 2 Wheat. 259, 4 L. ed. 234.

²³ *Forbes v. Scannell*, 13 Cal. 242.

²⁴ *Cherokee Nation v. Georgia*, 5 Pet. 17, 8 L. ed. 25; *Worcester v. Georgia*, 6 Pet. 555, 8 L. ed. 483; *Mackey v. Coxe*, 18 How. 103, 15 L. ed. 299; *Elk v. Wilkins*, 112 U. S. 102, 5 S. Ct. 41, 28 L. ed. 643; *United States v. Kagama*, 118 U. S. 379, 6 S. Ct. 1109, 30 L. ed. 228; *Cherokee Nation v. Kansas Ry. Co.*, 135 U. S. 653, 10 S. Ct. 965, 34 L. ed. 295; *Roff v. Barney*, 168 U. S. 221, 18 S. Ct. 60, 42 L. ed. 442.

²⁵ *Cherokee Nation v. Georgia*, 5 Pet. 19, 8 L. ed. 25; *United States v. Forty-three Gallons of Whisky*, 93 U. S. 196, 23 L. ed. 846; *Choctaw Nation v. United States*, 119 U. S. 27, 7 S. Ct. 75, 30 L. ed. 306.

²⁶ *Durrand v. Hollins*, 4 Blatchf. 451, Fed. Cas. No. 4186.

²⁷ *Durrand v. Hollins*, 4 Blatchf. 451, Fed. Cas. No. 4186.

²⁸ *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *Dred Scott v. Sandford*, 19 How. 629, 15 L. ed. 691.

an act of Congress, a treaty may be abrogated by a later act,²⁹ and when the repugnancy between a treaty and a later act of Congress is clear the former must yield,³⁰ and the courts are bound to follow the later act;³¹ but the courts should not construe an act of Congress as modifying or annulling a treaty unless its words clearly point to such a construction.³²

So far as treaty provisions can become subjects of judicial cognizance in the courts, they are subject to such acts as Congress may pass for their enforcement, modification or repeal,³³ but Congress cannot organize boards of revision to annul titles confirmed under a public treaty.³⁴ The abrogation of a treaty cannot affect property rights already vested under it.³⁵

The treaty-making clause of the constitution is retroactive as well as prospective.³⁶ A treaty in order to be binding, must be within the legitimate powers vested by the constitution in the general government,³⁷ and a treaty in violation of the constitution is of no effect.³⁸ A treaty with a sovereign inures to his successor in the government of the country.³⁹

²⁹ *The Cherokee Tobacco*, 11 Wall. 621, 20 L. ed. 227; *Horner v. United States*, 143 U. S. 578, 12 S. Ct. 522, 36 L. ed. 266; *Thomas v. Gay*, 169 U. S. 270, 18 S. Ct. 340, 42 L. ed. 740; *Stephens v. Cherokee Nation*, 174 U. S. 483, 19 S. Ct. 722, 43 L. ed. 1041; *United States v. Lee Yen Tai*, 185 U. S. 220, 22 S. Ct. 629, 46 L. ed. 878.

³⁰ *The Cherokee Tobacco*, 11 Wall. 620, 20 L. ed. 227; *Whitney v. Robertson*, 124 U. S. 194, 8 S. Ct. 456, 31 L. ed. 386; *Fong Yue Ting v. United States*, 149 U. S. 720, 13 S. Ct. 1016, 37 L. ed. 905; *La Abra Min. Co. v. United States*, 175 U. S. 460, 20 S. Ct. 168, 44 L. ed. 223.

³¹ *Bottiller v. Dominguez*, 130 U. S. 247, 9 S. Ct. 525, 32 L. ed. 926.

³² *Lem Moon Sing v. United States*, 158 U. S. 549, 15 S. Ct. 967, 39 L. ed. 1082.

³³ *Head Money Cases*, 112 U. S. 599, 5 S. Ct. 247, 28 L. ed. 798; *Neeley v. Henkel*, 180 U. S. 126, 21 S. Ct. 308, 45 L. ed. 448.

³⁴ *Reichart v. Felps*, 6 Wall. 166, 18 L. ed. 849.

³⁵ *Chirac v. Chirac*, 2 Wheat. 277, 4 L. ed. 234; *Society for Propagation of Gospel v. New Haven*, 8 Wheat. 494, 5 L. ed. 662; *The Chinese Exclusion Case*, 130 U. S. 602, 9 S. Ct. 623, 32 L. ed. 1063.

³⁶ *Hauenstein v. Lynham*, 100 U. S. 489, 25 L. ed. 628.

³⁷ *License Cases*, 5 How. 613, 12 L. ed. 256.

³⁸ *The Cherokee Tobacco*, 11 Wall. 620, 20 L. ed. 227.

³⁹ *The Sapphire*, 11 Wall. 168, 20 L. ed. 127.

Appointment and Removal of Officers.

An office is a public station, or employment, conferred by appointment of the government; the term embraces the ideas of tenure, duration, emolument and duties,⁴⁰ and he who holds the office and performs the duties is an officer.⁴¹ It follows that there can be no officer, either *de jure* or *de facto*, where there is no office, as where the act attempting to create an office is void; in such a case a person assuming to act as an officer is a mere usurper.⁴²

A person in the service of the government is an officer of the United States only when he holds his place by an appointment of the President, or of one of the courts of justice or heads of departments authorized by law to make such appointment.⁴³ A person employed under a contract is not necessarily an officer.⁴⁴ Thus customs collector's clerks are not United States officers;⁴⁵ nor is a merchant appraiser;⁴⁶ nor a paymaster's clerk in the navy.⁴⁷ The mere direction that a thing shall be done does not constitute an office.⁴⁸

— Power of the Executive.

The appointment and removal of officers is a necessary incident of the executive power.⁴⁹ The power of the President

⁴⁰ *United States v. Hartwell*, 6 Wall. 393, 18 L. ed. 830; *United States v. Moore*, 95 U. S. 762, 24 L. ed. 588; *Thomas v. Chicago etc. Ry. Co.*, 37 Fed. 549; *Northwestern Ins. Co. v. Quinn*, 69 Fed. 464; *United States v. McCrary*, 91 Fed. 296; *Foltz v. Kerlin*, 105 Ind. 223, 55 Am. Rep. 198, 4 N. E. 440.

⁴¹ *United States v. Maurice*, 2 Brock, 96, Fed. Cas. No. 15,747.

⁴² *Norton v. Shelby County*, 118 U. S. 425, 6 S. Ct. 1121, 30 L. ed. 178; *In re Allison*, 13 Colo. 530, 16 Am. St. Rep. 227, 22 Pac. 821, 10 L. R. A. 790.

⁴³ *United States v. Monat*, 124 U. S. 307, 8 S. Ct. 506, 31 L. ed. 463.

⁴⁴ *United States v. Maurice*, 2 Brock. 96, Fed. Cas. No. 15,747.

⁴⁵ *United States v. Smith*, 124 U. S. 532, 8 S. Ct. 597, 31 L. ed. 534.

⁴⁶ *Auffmordt v. Hedden*, 137 U. S. 127, 11 S. Ct. 108, 34 L. ed. 674.

⁴⁷ *United States v. Monat*, 124 U. S. 308, 8 S. Ct. 506, 31 L. ed. 463.

⁴⁸ *United States v. Maurice*, 2 Brock. 96, Fed. Cas. No. 15,747.

⁴⁹ *Ex parte Hennen*, 13 Pet. 230, 10 L. ed. 138.

to appoint necessarily includes the power to remove officers,⁵⁰ and although the appointing power in certain cases is vested in the President and Senate jointly, the power of removal is in the President alone, and the consent of the Senate is unnecessary.⁵¹ So where no tenure of office is prescribed by the constitution, and unless Congress shall have given some other duration to it, the President may remove any officer, whether civil or military.⁵² Accordingly the President may remove military officers,⁵³ territorial judges,⁵⁴ United States district attorneys,^{54a} assessors of internal revenue.⁵⁵

A general power to remove officers carries the right to remove at any time or in any manner deemed best, with or without previous notice,⁵⁶ and a removal carries with it the presumption that there was cause,⁵⁷ and where an officer is removed without notice it will be presumed that the removal was for a cause other than those specified by Congress and which carry the right to notice.⁵⁸ Where the power to remove an

⁵⁰ *Ex parte Hennen*, 13 Pet. 230, 10 L. ed. 138; *Blake v. United States*, 103 U. S. 232, 26 L. ed. 462; *United States v. Allred*, 155 U. S. 594, 15 S. Ct. 233, 39 L. ed. 273; *Gratiot v. United States*, 1 Ct. of Cl. 258; *In re Eaves*, 30 Fed. 23; *State v. Chatfield*, 71 Conn. 112, 40 Atl. 925; *People v. Robb*, 126 N. Y. 182, 27 N. E. 267.

⁵¹ *Ex parte Hennen*, 13 Pet. 259, 10 L. ed. 138; *Blake v. United States*, 103 U. S. 231, 26 L. ed. 462; *Parsons v. United States*, 167 U. S. 331, 17 S. Ct. 882, 42 L. ed. 185; *Shurtleff v. United States*, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828; *United States v. Avery, Deady*, 207, Fed. Cas. No. 14,481; *McElrath's Case*, 12 Ct. of Cl. 201; *Collin's Case*, 15 Ct. of Cl. 22.

⁵² *Ex parte Hennen*, 13 Pet. 259, 10 L. ed. 138; *Gratiot v. United States*, 1 Ct. of Cl. 258.

⁵³ *Blake v. United States*, 103 U. S. 231, 26 L. ed. 462; *Ex parte Schaumburg*, 21 Fed. Cas. 654.

⁵⁴ *Ex parte Hennen*, 13 Pet. 230, 10 L. ed. 138; *Anonymous*, 3 Opin. Atty. Gen. 673; *Anonymous*, 5 Opin. Atty. Gen. 288.

^{54a} *Parsons v. United States*, 167 U. S. 331, 17 S. Ct. 882, 42 L. ed. 185.

⁵⁵ *United States v. Avery, Deady*, 207, Fed. Cas. No. 14,481.

⁵⁶ *Eckoff v. District of Columbia*, 135 U. S. 241, 10 S. Ct. 752, 34 L. ed. 120.

⁵⁷ *In re Marshalship for Alabama*, 20 Fed. 382.

⁵⁸ *Shurtleff v. United States*, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828.

officer is discretionary the courts will not inquire as to the grounds for a removal.⁵⁹

A removal may be either express, by notification, by order of the President, or implied by the appointment of another person to the same office, but notification of the fact of removal must be actually received by the person removed.⁶⁰ The appointment of a successor to an office operates, per se, as a removal of the incumbent.⁶¹ So the appointment of a marshal's successor completes the removal of the incumbent, and a sale made by the latter subsequently is void.⁶² Acceptance by the appointee and notification to the incumbent are necessary to divest the incumbent of his powers.⁶³

"He shall nominate" means to recommend in writing; in this form the advice of the Senate is asked.⁶⁴ "Nominating" and "appointing" are distinct acts from commissioning; when the appointing power has done everything to be performed by him the appointment is complete.⁶⁵ Officers whose duties are extended by Congress need not be again nominated and appointed.⁶⁶ The President cannot make a temporary appointment during a recess, if the Senate was in session when or since the vacancy occurred.⁶⁷ The successor of an appointee refusing to accept is in the place of the appointee, and not the

⁵⁹ *Ex parte Hennen*, 13 Pet. 261, 10 L. ed. 138; *Ex parte Schaumburg*, 21 Fed. Cas. 654; *In re Marshalship for Alabama*, 20 Fed. 382.

⁶⁰ *Ex parte Hennen*, 13 Pet. 261, 10 L. ed. 138; *Bowerbank v. Morris*, Wall, Sr. 118, Fed. Cas. No. 1726.

⁶¹ *Ex parte Hennen*, 13 Pet. 261, 10 L. ed. 138; *Holley v. New York City*, 59 N. Y. 170.

⁶² *United States v. Bank of Arkansas*, Hemp. 462, Fed. Cas. No. 14,515.

⁶³ *People ex rel. v. Carrique*, 2 Hill, 98; *Commonwealth ex rel. v. Slifer*, 25 Pa. St. 29, 64 Am. Dec. 682.

⁶⁴ *Marbury v. Madison*, 1 Cr. 154, 2 L. ed. 60.

⁶⁵ *Marbury v. Madison*, 1 Cr. 154, 2 L. ed. 60; *Seamon v. Northwestern Mut. Life Ins. Co.*, 86 Fed. 497; *People ex rel. v. Perkins*, 85 Cal. 513, 26 Pac. 247.

⁶⁶ *Shoemaker v. United States*, 147 U. S. 301, 13 S. Ct. 361, 37 L. ed. 170.

⁶⁷ *Case of District Attorney*, 16 Am. Law. Reg. 786.

original holder;⁶⁸ the appointee never having been inducted into office, he is not to be considered in determining the status or rights of the successor.⁶⁹ The delivery of the commission is not necessary to complete an appointment; the commission is merely evidence of the appointee's title and not necessary to its vestiture.⁷⁰ Once issued, the commission is conclusive evidence of appointment as against the appointing power.⁷¹ When the appointment to an office is complete, it is irrevocable whether the commission has been delivered or not.⁷²

Offices are created for the benefit of the public, and private parties cannot question the title of persons clothed with the insignia of an office and in apparent possession of its powers and functions.⁷³ So the title of a person acting with color of authority, even if he be not a good officer in point of law, cannot be collaterally attacked.⁷⁴ Appointment and service as a deputy marshal without a valid oath constitutes one a *de facto* officer.⁷⁵ So also the proceedings of a justice of the peace, duly appointed, but not commissioned, are valid.⁷⁶

⁶⁸ *Marbury v. Madison*, 1 Cr. 154-162, 2 L. ed. 60; *United States v. Kirkpatrick*, 9 Wheat. 734, 6 L. ed. 199; *Johnson v. United States*, 5 Mason, 438, Fed. Cas. No. 7419; *Bowerbank v. Morris*, Wall. Sr. 118, Fed. Cas. No. 1726.

⁶⁹ *Johnston v. Wilson*, 2 N. H. 203, 9 Am. Dec. 51; *People ex rel v. Whitman*, 10 Cal. 38.

⁷⁰ *Marbury v. Madison*, 1 Cr. 156-159, 2 L. ed. 60; *Sprowl v. Lawrence*, 33 Ala. 689; *State ex rel. v. Peelle*, 124 Ind. 520, 24 N. E. 442, 8 L. R. A. 228.

⁷¹ *Marbury v. Madison*, 1 Cr. 156-159, 2 L. ed. 60; *Quimby v. Boyd*, 8 Colo. 207, 6 Pac. 470.

⁷² *Marbury v. Madison*, 1 Cr. 154-162, 2 L. ed. 60; *Speed v. Common Council*, 97 Mich. 207, 56 N. W. 573; *State ex rel. v. Barbour*, 53 Conn. 85, 55 Am. Rep. 68, 22 Atl. 688.

⁷³ *Norton v. Shelby County*, 118 U. S. 441, 6 S. Ct. 1121, 30 L. ed. 178.

⁷⁴ *Ex parte Henry Ward*, 173 U. S. 456, 19 S. Ct. 459, 43 L. ed. 765.

⁷⁵ *Wright v. United States*, 158 U. S. 238, 15 S. Ct. 819, 39 L. ed. 963.

⁷⁶ *Billy v. State*, 2 Nott & McC. 361.

Heads of departments can make appointments only in those cases authorized by law;⁷⁷ but as the President has power to suspend an internal revenue collector, the act of the Secretary of the Treasury in so doing is deemed to be the act of the President.⁷⁸

The President may appoint diplomatic agents of any rank at any place or time.⁷⁹ In the absence of an act providing for the appointment of vice-consuls, they can only be appointed with the advice and consent of the Senate.⁸⁰ A vice-consul is a mere subordinate officer, and Congress has power to vest in the President the power to appoint a vice-consul to perform temporarily the functions of the consular office.⁸¹ The phrase "ambassadors, other public ministers and consuls," as used in the constitution is descriptive of a class existing by the law of nations, and applies to diplomatic agents.⁸²

— Power of Congress.

The Senate can only reject or affirm the nomination of the President; it cannot take the initial step.⁸³ Appointments to office can only be made by the executive in the manner provided and not by congressional enactment,^{83a} and Congress cannot by law designate the person to fill an office;⁸⁴ but Congress may authorize a particular officer to perform a particular duty,⁸⁵ or may extend the duties of officers,⁸⁶ and Congress may retire an officer or may change his rank on the active or

⁷⁷ *United States v. Maurice*, 2 Brock. 96, Fed. Cas. No. 15,747.

⁷⁸ *United States v. Farden*, 99 U. S. 19, 25 L. ed. 267.

⁷⁹ Anonymous, 7 Opin. Atty. Gen. 186.

⁸⁰ *Dainese's Case*, 15 Ct. of Cl. 64.

⁸¹ *United States v. Eaton*, 169 U. S. 344, 18 S. Ct. 374, 42 L. ed. 767.

⁸² *In re Baiz*, 135 U. S. 403, 10 S. Ct. 854, 34 L. ed. 222.

⁸³ Anonymous, 3 Opin. Atty. Gen. 188.

^{83a} *Wood's Case*, 15 Ct. of Cl. 151.

⁸⁴ *United States v. Ferreira*, 13 How. 40, 14 L. ed. 42.

⁸⁵ *Kentucky v. Dennison*, 24 How. 108, 16 L. ed. 717.

⁸⁶ *Shoemaker v. United States*, 147 U. S. 301, 13 S. Ct. 361, 37 L. ed. 170.

retired list without conflicting with this clause.⁸⁷ The constitution does not allow Congress to vest the appointment of inferior officers elsewhere than in the President alone, in courts of law or in the heads of departments;⁸⁸ but when Congress does vest the power in any of these agencies it may restrict the power of removal.⁸⁹

The word "inferior" as here used means subordinate or inferior to those officers in whom the appointment may be vested.⁹⁰ A receiver of a national bank appointed by the head of a department is an inferior officer;⁹¹ so also are supervisors of elections, and the vesting by Congress of the appointment of them in the circuit court is constitutional and the duty on the court obligatory.⁹² All offices under the federal government, except such as are expressly provided for in the constitution, shall be established by law,⁹³ and all officers appointed by authority of Congress hold their offices at the discretion of the appointing power, unless the tenure is restricted by Congress.⁹⁴ The appointment of clerks of courts belongs properly to the courts of law;⁹⁵ but Congress may restrict the appointment of a commissioner although his duties are of a judicial nature.⁹⁶ A state magistrate who commits offenders against the laws of the United States is not an officer within this clause.⁹⁷ The commissioner of pensions is not the "head of a department" as here used;⁹⁸ nor is a collector of cus-

⁸⁷ Wood's Case, 18 Ct. of Cl. 761; De Celis' Case, 13 Ct. of Cl. 117.

⁸⁸ *Ekiu v. United States*, 142 U. S. 663, 12 S. Ct. 336, 35 L. ed. 1146.

⁸⁹ *United States v. Perkins*, 116 U. S. 485, 6 S. Ct. 449, 29 L. ed. 700.

⁹⁰ *Collins' Case*, 14 Ct. of Cl. 568.

⁹¹ *Frelinghuysen v. Baldwin*, 12 Fed. 395.

⁹² *In re Citizens of Cincinnati*, 2 Flipp. 228, Fed. Cas. No. 13,628.

⁹³ *United States v. Maurice*, 2 Brock. 96, Fed. Cas. No. 15,747.

⁹⁴ *Ex parte Hennen*, 13 Pet. 259, 10 L. ed. 138.

⁹⁵ *Ex parte Hennen*, 13 Pet. 258, 10 L. ed. 138; *In re Shipping Commissioner*, 13 Blatchf. 346, Fed. Cas. No. 12,792.

⁹⁶ *Ex parte Robinson*, 6 McLean, 355, Fed. Cas. No. 11,935.

⁹⁷ *Ex parte Gist*, 26 Ala. 156.

⁹⁸ *United States v. Germaine*, 99 U. S. 509, 25 L. ed. 482.

toms.⁹⁹ The civil service law never contemplated any interference with the President's power of removal.¹⁰⁰

The temporary appointment of a person to an office by the President is not terminated by the refusal of the Senate to confirm the permanent appointment, and the powers of the suspended officer whose office he occupied are not thereby revived.¹⁰¹ The action of the Senate in refusing confirmation to the President's nomination is conclusive.¹⁰²

⁹⁹ *United States v. Smith*, 124 U. S. 533, 8 S. Ct. 595, 31 L. ed. 534.

¹⁰⁰ *Flemming v. Stahl*, 83 Fed. 940.

¹⁰¹ *In re Marshalship of Alabama*, 20 Fed. 379.

¹⁰² *In re Marshalship of Alabama*, 20 Fed. 379.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

The power conferred by this clause is not confined to vacancies which may happen in offices created by law.¹ An office becomes vacant when the incumbent, having tendered his resignation, receives notice from the proper authorities that the same has been accepted.² An act making it unlawful for a person to hold more than one office does not create a vacancy in either until the incumbent elects which to retain.³ The commission of an officer appointed during a recess, and afterward nominated and rejected, continues in force until the next session.⁴ If the Senate concur, it is a new appointment and a new bond will be required.⁵ Whenever an applicant appears with a commission signed by the President appointing him a marshal to fill a vacancy created during a recess, it is the duty of the district judge to take his bond and administer the oath, regardless of any question of the President's power.⁶ The President cannot make a temporary appointment during a recess if the Senate was in session when or since the vacancy occurred.⁷

1 *United States v. Maurice*, 2 Brock. 96, Fed. Cas. No. 15,747.

2 *Mimmack v. United States*, 97 U. S. 437, 24 L. ed. 1067.

3 *United States v. Harsha*, 172 U. S. 572, 19 S. Ct. 294, 43 L. ed. 556.

4 *Hill's Case*, 2 Opin. Atty. Gen. 336; *Tyson's Case*, 4 Opin. Atty. Gen. 30.

5 *United States v. Kirkpatrick*, 9 Wheat. 733, 6 L. ed. 199.

6 *In re Yancey*, 28 Fed. 445.

7 *Case of District Atty.*, 16 Am. Law. Reg. 786.

SECTION 3.

MESSAGES. RECEPTION OF AMBASSADORS, ETC. COMMISSIONING OFFICERS.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

It is the duty of the President to see that the laws are faithfully executed as they are expounded and adjudged by the coordinate branch of the government to which that duty is assigned,¹ to the extent of the means placed at his disposal;² but only by such means as the constitution and laws themselves have given him power to employ,³ and in this he cannot be enjoined by the supreme court,⁴ his discretionary power being beyond judicial control.⁵

¹ *Ex parte Merryman*, Taney, 246.

² Anonymous, 9 Opin. Atty. Gen. 524.

³ *In re Kemp*, 16 Wis. 359.

⁴ *Mississippi v. Johnson*, 4 Wall. 500, 18 L. ed. 437; *Gaines v. Thompson*, 7 Wall. 353, 19 L. ed. 62.

⁵ *Marbury v. Madison*, 1 Cr. 169, 2 L. ed. 60; *In re Kaine*, 14 How. 119, 14 L. ed. 345; *Kendall v. United States*, 12 Pet. 527, 9 L. ed. 1181; *Prize Cases*, 2 Black, 635, 17 L. ed. 459; *Bartlett v. Kane*, 16 How. 272, 14 L. ed. 931; *Board of Liquidation v. McComb*, 92 U. S. 541, 23 L. ed. 623; *Craig v. Leitensdorfer*, 123 U. S. 211, 8 S. Ct.

The obligation thus imposed on the President to see the laws faithfully executed does not confer upon him any power to forbid their execution.⁶ He has no power to dispense with or forbid the execution of any law,⁷ and he cannot be restrained from carrying into effect an act of Congress alleged to be unconstitutional.⁸ It is the duty of the executive department to protect a justice or judge of a United States court when there is reason to believe that he will be in personal danger while performing his duties.⁹ Under this power the President ought to act when the laws are violated and the rights of the government invaded.¹⁰

In case of a revolution or the dismemberment of a nation, the courts cannot take notice of any new government or sovereignty until it is recognized by the political department, and they are bound by such recognition.¹¹ The decision of the executive as to the public character of one claiming to be a foreign minister is binding on the courts.¹²

Commissioning and appointing officers are distinct powers.¹³ The commissioning of an officer is merely the issuing to him of the evidence of his appointment.¹⁴

1393, 31 L. ed. 114; *The Chinese Exclusion Case*, 130 U. S. 602, 9 S. Ct. 623, 32 L. ed. 1068; *Quackenbush v. United States*, 177 U. S. 25, 20 S. Ct. 530, 44 L. ed. 654; *Keim v. United States*, 177 U. S. 292, 20 S. Ct. 574, 44 L. ed. 774.

⁶ *Kendall v. United States*, 12 Pet. 613, 9 L. ed. 1181.

⁷ *Kendall v. United States*, 12 Pet. 613, 9 L. ed. 1181.

⁸ *Mississippi v. Johnson*, 4 Wall. 475, 18 L. ed. 437; *Georgia v. Stanton*, 6 Wall. 77, 18 L. ed. 721.

⁹ *In re Neagle*, 135 U. S. 67, 10 S. Ct. 658, 34 L. ed. 55.

¹⁰ *State v. Delesdernier*, 7 Tex. 95.

¹¹ *United States v. Palmer*, 3 Wheat. 634, 4 L. ed. 471; *Gelston v. Hoyt*, 3 Wheat. 323, 4 L. ed. 381; *Rose v. Himely*, 4 Cr. 441, 2 L. ed. 608; *The Divina Pastora*, 4 Wheat. 52, 4 L. ed. 512; *The Nuestra Señora de la Caridad*, 4 Wheat. 494, 4 L. ed. 624; *Prize Cases*, 2 Black, 635, 17 L. ed. 459; *The Santissima Trinidad*, 7 Wheat. 283, 5 L. ed. 454; *United States v. Yorba*, 1 Wall. 423, 17 L. ed. 635; *Phillips v. Payne*, 92 U. S. 132, 23 L. ed. 649; *Jones v. United States*, 137 U. S. 212, 11 S. Ct. 80, 34 L. ed. 691.

¹² *In re Baiz*, 135 U. S. 432, 10 S. Ct. 854, 34 L. ed. 222.

¹³ *Marbury v. Madison*, 1 Cr. 151, 2 L. ed. 60.

¹⁴ *Marbury v. Madison*, 1 Cr. 156, 2 L. ed. 60.

SECTION 4.

REMOVAL OF OFFICERS ON IMPEACHMENT.

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

A senator or a member of Congress is not a civil officer within the meaning of this clause.¹ United States circuit and district judges are contemplated by this provision.²

¹ Blount's Trial, 102.

² Peck's Trial, Chase's Trials, 137.

ARTICLE III.**JUDICIAL DEPARTMENT.****SECTION 1.****SUPREME AND INFERIOR COURTS. TERM OF OFFICE AND COMPENSATION OF JUDGES.**

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Establishment of Federal Courts.

The supreme court exists by virtue of a direct grant of power from the people.¹ Congress cannot confer jurisdiction upon any courts except those existing under the constitution and laws of the United States,² nor can it confer any part of the judicial power upon an executive officer.³ The entire judicial power delegated by the constitution does not vest ipso facto in the courts created by Congress. The inferior federal courts derive their judicial power from Congress, not directly from the constitution, and can exercise only such powers as Congress sees fit to confer.⁴

Legislation is necessary to vest in the inferior courts their judicial power;⁵ the power, although originating in the con-

¹ *Rhode Island v. Massachusetts*, 12 Pet. 720, 9 L. ed. 1233.

² *Houston v. Moore*, 5 Wheat. 27, 5 L. ed. 19.

³ *Beatty v. United States*, 1 Dev. 231.

⁴ *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718.

⁵ *McClung v. Silliman*, 6 Wheat. 604, 5 L. ed. 840.

stitution, being dependent for distribution, organization and mode of exercise entirely upon the action of Congress.⁶ It is only in courts ordained and established by itself that Congress can vest any portion of the judicial power of the United States.⁷ Congress cannot vest any portion of the judicial power here referred to in state courts.⁸ So a state court cannot exercise any judicial power conferred by Congress;⁹ nor can Congress enforce jurisdiction on a state court,¹⁰ nor compel a state court to exercise jurisdiction.¹¹ Congress cannot give jurisdiction to, or require the services of, a state officer as such;¹² but state officers may be authorized to perform duties merely incidental to the judicial power; e. g., the issuing of a warrant for a deserting seaman by a justice of the peace.¹³

The judicial power is vested by the constitution in the courts of the United States,¹⁴ and Congress may authorize any United

⁶ *Cary v. Curtis*, 3 How. 245, 11 L. ed. 576; *Fountain v. Ravenel*, 17 How. 384, 15 L. ed. 80.

⁷ *Houston v. Moore*, 5 Wheat. 27, 5 L. ed. 19; *United States v. Ames*, 1 Wood. & M. 89, Fed. Cas. No. 14,441; *The British Prisoners*, 1 Wood. & M. 66, Fed. Cas. No. 12,734; *Stearns v. United States*, 2 Paine, 308, Fed. Cas. No. 13,341; *Ex parte Knowles*, 5 Cal. 300; *Ely v. Peck*, 7 Conn. 239; *Davison v. Champlin*, 7 Conn. 244; *Morgan v. Dudley*, 18 B. Mon. 714, 68 Am. Dec. 739; *Rushworth v. Judges of Hudson Pleas*, 58 N. J. L. 98, 32 Atl. 744; *United States v. Lathrop*, 17 Johns. 4; *State v. McBride*, Rice, 400; *Jackson v. Rose*, 2 Va. Cas. 34.

⁸ *Martin v. Hunter*, 1 Wheat. 330, 4 L. ed. 97; *Houston v. Moore*, 5 Wheat. 27, 5 L. ed. 19; *Stearns v. United States*, 2 Paine, 308, Fed. Cas. No. 13,341; *Ex parte Knowles*, 5 Cal. 301; *Rushworth v. Judges*, 58 N. J. L. 99, 32 Atl. 744; *United States v. Lathrop*, 17 Johns. 5.

⁹ *Ex parte Knowles*, 5 Cal. 301; *Peck v. Jenness*, 16 N. H. 534, 43 Am. Dec. 581; *Beavins' Petition*, 33 N. H. 91.

¹⁰ *Stearns v. United States*, 2 Paine, 308, Fed. Cas. No. 13,341; *Ex parte Stephens*, 70 Mass. 559; *The British Prisoners*, 1 Wood. & M. 66, Fed. Cas. No. 14,441.

¹¹ *Rushworth v. Judges, etc.*, 58 N. J. L. 98, 32 Atl. 744.

¹² *Prigg v. Commonwealth*, 16 Pet. 539, 10 L. ed. 1060; *Ex parte Pool*, 2 Va. Cas. 276.

¹³ *Robertson v. Baldwin*, 165 U. S. 279, 17 S. Ct. 326, 41 L. ed. 715. And see *In re Iasigi*, 79 Fed. 755.

¹⁴ *Thomas v. Loney*, 134 U. S. 372, 10 S. Ct. 584, 33 L. ed. 949.

States court to perform any act which the constitution does not require to be performed in a different manner.¹⁵ This section does not give to Congress the power to establish military courts in insurrectionary districts,¹⁶ or to confer jurisdiction on a military commission.¹⁷ Under this clause Congress may invest an inferior federal court with jurisdiction over matters wherein the supreme court has original but not exclusive jurisdiction.¹⁸ So inferior courts may be given original jurisdiction in matters affecting consuls,¹⁹ and an act which confers on the circuit courts jurisdiction to restrain combinations to obstruct interstate commerce is not void for want of power.²⁰ Congress may establish circuit and district courts in any state of the Union and may confer on them equitable jurisdiction in cases coming within the constitution,²¹ and in all cases to which the judicial power extends Congress may rightfully vest exclusive jurisdiction.²²

An act adopting state remedies is valid,²³ and the statute requiring federal courts to conform to state practice does not require them to renounce jurisdiction lawfully acquired under act of Congress,²⁴ nor does it conflict with the constitutional clause prescribing the equity jurisdiction of the courts.²⁵ The

¹⁵ *Ex parte Gist*, 26 Ala. 156; *Ex parte Pool*, 2 Va. Cas. 276.

¹⁶ *Mechanics' etc. Bank v. Union Bank*, 22 Wall. 276, 22 L. ed. 871; *The Grapeshot*, 9 Wall. 132, 19 L. ed. 651.

¹⁷ *Ex parte Milligan*, 4 Wall. 121, 18 L. ed. 281.

¹⁸ *Ames v. Kansas*, 111 U. S. 471, 4 S. Ct. 437, 28 L. ed. 482.

¹⁹ *Bors v. Preston*, 111 U. S. 256, 4 S. Ct. 407, 28 L. ed. 419; *Davis v. Packard*, 7 Pet. 281, 8 L. ed. 684; *Froment v. Duclos*, 30 Fed. 385; *Gittings v. Crawford*, Taney, 5, Fed. Cas. No. 5465; *Wilcox v. Luce*, 118 Cal. 642, 62 Am. St. Rep. 307, 50 Pac. 759, 45 L. R. A. 579.

²⁰ *United States v. Elliott*, 64 Fed. 27.

²¹ *Livingston v. Story*, 9 Pet. 655, 9 L. ed. 255.

²² *The Moses Taylor*, 4 Wall. 430, 18 L. ed. 397; *Cardle v. Tracy*, 11 Blatchf. 114, Fed. Cas. No. 2279; *United States v. Burlington etc. Co.*, 21 Fed. 337; *The Willamette Valley*, 62 Fed. 296.

²³ *Ex parte Boyd*, 105 U. S. 652, 26 L. ed. 1200; *Steam Stone-Cutter Co. v. Jones*, 21 Blatchf. 156, 13 Fed. 565.

²⁴ *Phelps v. Oaks*, 117 U. S. 239, 6 S. Ct. 714, 29 L. ed. 889; *O'Connell v. Reed*, 56 Fed. 534.

²⁵ *Ex parte Boyd*, 105 U. S. 656, 26 L. ed. 1200; *Sage v. St. Paul etc. Ry. Co.*, 47 Fed. 4.

power conferred by this clause does not warrant Congress in abrogating any established law of property or in removing any obligation of the citizens of a state to submit to the rule of the local sovereign;²⁶ nor does it afford any pretext for giving a United States court original jurisdiction in a cause involving an offense against state laws, because the defense depends upon the constitution and laws of the United States.²⁷

The United States courts are in no sense agencies of the federal government, and the federal government cannot be held liable for their errors.²⁸

— Judicial Power.

Every trial involves the exercise of judicial power,²⁹ judicial power being that power with which courts are clothed for the purpose of the trial and determination of causes,³⁰ the power to hear and determine the subject matter in controversy between the parties to a suit and render a judgment or decree.³¹ It is not sufficient to bring a matter under the judicial power that it involves the exercise of judgment upon law and facts;³² e. g., matters submitted to commissioners or heads of departments for decision according to their discretion.³³ The power to hear

²⁶ *Suydam v. Williamson*, 24 How. 433, 15 L. ed. 978; *Independent Dist. v. Beard*, 83 Fed. 14.

²⁷ *State v. Davis*, 12 S. C. 528.

²⁸ *United States v. Dunnington*, 146 U. S. 351, 13 S. Ct. 79, 38 L. ed. 996.

²⁹ *Ex parte Milligan*, 4 Wall. 121, 18 L. ed. 281.

³⁰ *United States v. Arredondo*, 6 Pet. 709, 8 L. ed. 547; *Holmes v. Oregon etc. R. R. Co.*, 7 Saw. 386, 9 Fed. 232; *Nashville C. & St. L. Ry. Co. v. Taylor*, 86 Fed. 168.

³¹ *Rhode Island v. Massachusetts*, 12 Pet. 718, 9 L. ed. 1233; *Riggs v. Johnson County*, 6 Wall. 187, 18 L. ed. 768; *Borden v. State*, 11 Ark. 544, 54 Am. Dec. 235; *Ritter v. Kunkle*, 39 N. J. L. 262; *Fisher v. Hepburn*, 48 N. Y. 52; *Vaughn v. Congdon*, 56 Vt. 127.

³² *United States v. Ferreira*, 13 How. 47, 14 L. ed. 42; *Murray v. Hoboken Land etc. Co.*, 18 How. 272, 15 L. ed. 372; *Ex parte Val-landingham*, 1 Wall. 253, 17 L. ed. 599; *In re Sanborn*, 148 U. S. 224, 13 S. Ct. 578, 37 L. ed. 429.

³³ *In re Kaine*, 14 How. 120, 14 L. ed. 347; *Murray v. Hoboken etc. Land Co.*, 18 How. 280, 15 L. ed. 372; *In re Sanborn*, 148 U. S.

and pass upon the validity of a claim in an *ex parte* proceeding is not a judicial power.³⁴ A provision requiring an assessor to impose a certain penalty if he shall find a false return does not confer judicial power.³⁵ An administrative duty may, however, involve the exercise of judicial power in an enlarged sense, as where the performance of it involves inquiry into the existence of facts, and the application to them of rules of law; but it does not involve the exercise of judicial power as here understood.³⁶

In every well-organized government the judicial power should be coextensive with the legislative.³⁷ The judicial power of the federal courts was designed for the benefit of all the people of the United States, and is to be exercised for the benefit of defendants as well as plaintiffs.³⁸ It presupposes the existence of an established government, and the acceptance of the judicial office is a recognition of the authority of the government from which it is derived.³⁹ So the courts must expound the law as they find it,⁴⁰ and their power can only be exercised to give effect to the will of the legislature, not that of the judges.⁴¹ The judicial power must always regard the constitution as paramount.⁴²

224, 13 S. Ct. 578, 37 L. ed. 429; *Ex parte Gans*, 5 McCreary, 395, 17 Fed. 473; *In re Interstate Commerce Com.*, 53 Fed. 479; *Ex parte Riebling*, 70 Fed. 311.

³⁴ *United States v. Ferreira*, 13 How. 47, 14 L. ed. 42; *United States v. Todd*, 13 How. 52, 14 L. ed. 47; *Ex parte Riebling*, 70 Fed. 311; *Humphreys v. United States*, 1 Dev. 204.

³⁵ *Doll v. Evans*, 15 Int. Rev. Rec. 143, Fed. Cas. No. 3969.

³⁶ *Murray v. Hoboken Land etc. Co.*, 18 How. 280, 15 L. ed. 373.

³⁷ *Kendall v. United States*, 12 Pet. 619, 9 L. ed. 1181.

³⁸ *Martin v. Hunter*, 1 Wheat. 348, 4 L. ed. 97.

³⁹ *Luther v. Borden*, 7 How. 39, 12 L. ed. 581.

⁴⁰ *Gelston v. Hoyt*, 3 Wheat. 309, 4 L. ed. 381; *Lake County v. Rollins*, 130 U. S. 672, 9 S. Ct. 651, 32 L. ed. 1060.

⁴¹ *Osborne v. United States Bank*, 9 Wheat. 866, 6 L. ed. 204; *Williams v. Gaylord*, 186 U. S. 164, 22 S. Ct. 798, 46 L. ed. 1102.

⁴² *Marbury v. Madison*, 1 Cr. 176-180, 2 L. ed. 60; *Cohen v. Virginia*, 6 Wheat. 414, 5 L. ed. 257; *Pollock v. Farmers' Loan etc. Co.*, 157 U. S. 554, 15 S. Ct. 679, 39 L. ed. 759; *Mugler v. Kansas*, 123 U. S. 661, 8 S. Ct. 297, 31 L. ed. 205.

The object of this clause was to provide for the establishment of a judiciary of the United States as a department of the government,⁴³ independent in its own sphere, and having no authority to encroach on the powers granted to the other departments.⁴⁴ The declaration in the constitution that judicial power shall be vested in certain courts is equivalent to a provision that no judicial power is vested in Congress, or in either house, except in the cases specifically enumerated.⁴⁵ On the other hand, neither the executive department nor the legislative department can be restricted by the judicial, though the acts of both, when performed, are, in proper cases, subject to its cognizance.⁴⁶ The judiciary can only inquire whether the means devised by Congress, in the execution of a power, are forbidden by the constitution;⁴⁷ the courts cannot inquire, of their own motion, as to the validity of action taken by the other departments in the exercise of their powers;⁴⁸ the question must arise in a case involving the rights of actual litigants.⁴⁹

Upon political questions the courts are bound to follow the decision of the political departments of the government;⁵⁰

⁴³ *Chisholm v. Georgia*, 2 Dall. 432, 1 L. ed. 440; *Osborne v. Bank of United States*, 9 Wheat. 819, 6 L. ed. 204.

⁴⁴ *Marbury v. Madison*, 1 Cr. 176, 2 L. ed. 60; *Mississippi v. Johnson*, 4 Wall. 500, 18 L. ed. 437; *Veazie Bank v. Fenno*, 8 Wall. 548, 19 L. ed. 482; *Georgia v. Stanton*, 6 Wall. 50, 18 L. ed. 721; *Loan Association v. Topeka*, 20 Wall. 669, 22 L. ed. 455; *Lane v. Anderson*, 67 Fed. 563; *Enterprise Savings etc. Assn. v. Zumstein*, 67 Fed. 1000; *Taylor v. Kercheval*, 82 Fed. 497.

⁴⁵ *Kilbourn v. Thompson*, 103 U. S. 192, 26 L. ed. 377.

⁴⁶ *Bartlett v. Kane*, 16 How. 272, 14 L. ed. 931; *Board of Liquidation v. McComb*, 92 U. S. 541, 23 L. ed. 623; *Craig v. Leitensdorfer*, 123 U. S. 211, 8 S. Ct. 1393, 32 L. ed. 322; *United States v. Bashaw*, 152 U. S. 443, 14 S. Ct. 638, 38 L. ed. 505; *Keim v. United States*, 177 U. S. 292, 20 S. Ct. 574, 44 L. ed. 774.

⁴⁷ *Interstate Commerce Com. v. Brimson*, 154 U. S. 447, 14 S. Ct. 1125, 38 L. ed. 1047.

⁴⁸ *Quackenbush v. United States*, 177 U. S. 25, 20 S. Ct. 530, 44 L. ed. 654.

⁴⁹ *Clough v. Curtis*, 134 U. S. 372, 10 S. Ct. 573, 33 L. ed. 361.

⁵⁰ *Marbury v. Madison*, 1 Cr. 169, 2 L. ed. 60; *Foster v. Neilson*, 2 Pet. 307, 7 L. ed. 415; *United States v. Lee*, 106 U. S. 209, 1 S. Ct. 240, 27 L. ed. 171; *Craig v. Missouri*, 4 Pet. 438, 7 L. ed. 908; *Cherokee Nation v. Georgia*, 5 Pet. 20, 8 L. ed. 25.

e. g., the question as to the existence of peace or war;⁵¹ questions as to the existence of tribal relations;⁵² as to the public character of a person claiming to be a foreign minister;⁵³ as to the existence of a treaty;⁵⁴ as to whether a foreign power has become an independent state;⁵⁵ as to boundaries between the United States and a foreign nation;⁵⁶ as to the admission or exclusion of aliens.⁵⁷

It follows, then, that the courts cannot inquire as to the motive prompting the acts of the other departments of government;⁵⁸ their knowledge and good faith are not open to question.⁵⁹ Nor can the expediency or wisdom of those acts be questioned by the courts.⁶⁰

⁵¹ *Luther v. Borden*, 7 How. 42, 12 L. ed. 581; *Keely v. Sanders*, 99 U. S. 446, 25 L. ed. 327; *Neeley v. Henkel*, 180 U. S. 124, 21 S. Ct. 302, 45 L. ed. 448.

⁵² *United States v. Holiday*, 3 Wall. 419, 18 L. ed. 182.

⁵³ *In re Baiz*, 135 U. S. 432, 10 S. Ct. 854, 34 L. ed. 222.

⁵⁴ *Terlinden v. Ames*, 184 U. S. 288, 22 S. Ct. 484, 46 L. ed. 534.

⁵⁵ *Rose v. Himely*, 4 Cr. 272, 2 L. ed. 608; *Gelston v. Hoyt*, 3 Wheat. 324, 4 L. ed. 381; *United States v. Palmer*, 3 Wheat. 634, 4 L. ed. 471; *The Divina Pastora*, 4 Wheat. 63, 4 L. ed. 512; *The Santissima Trinidad*, 7 Wheat. 283, 5 L. ed. 454; *Williams v. Suffolk Ins. Co.*, 13 Pet. 420, 10 L. ed. 226; *Kennett v. Chambers*, 14 How. 50, 14 L. ed. 316; *United States v. Yorba*, 1 Wall. 423, 17 L. ed. 635; *Phillips v. Payne*, 92 U. S. 132, 23 L. ed. 649; *Jones v. United States*, 137 U. S. 212, 11 S. Ct. 80, 34 L. ed. 644.

⁵⁶ *De La Croix v. Chamberlain*, 12 Wheat. 600, 6 L. ed. 741; *Foster v. Neilson*, 2 Pet. 307, 7 L. ed. 415; *United States v. Arredondo*, 6 Pet. 711, 8 L. ed. 547; *Garcia v. Lee*, 12 Pet. 516, 9 L. ed. 1176; *United States v. Reynes*, 9 How. 154, 13 L. ed. 74.

⁵⁷ *Ekin v. United States*, 142 U. S. 660, 12 S. Ct. 336, 35 L. ed. 1146; *Fong Yue Ting v. United States*, 149 U. S. 712, 13 S. Ct. 1013, 37 L. ed. 905.

⁵⁸ *Fletcher v. Peck*, 6 Cr. 131, 3 L. ed. 162; *Ex parte McCordle*, 7 Wall. 514, 19 L. ed. 264; *Soon Hing v. Crowley*, 113 U. S. 710, 5 S. Ct. 730, 28 L. ed. 1145; *Angle v. Chicago etc. Ry. Co.*, 151 U. S. 18, 14 S. Ct. 240, 38 L. ed. 55.

⁵⁹ *United States v. Des Moines etc. Ry. Co.*, 142 U. S. 544, 12 S. Ct. 308, 35 L. ed. 1099.

⁶⁰ *Wilkes v. Dinsman*, 7 How. 127, 12 L. ed. 618; *Dred Scott v. Sandford*, 19 How. 405, 15 L. ed. 691; *United States v. Vassar*, 5 Wall. 469, 18 L. ed. 497; *United States v. Union Pacific R. R. Co.*,

The constitution defines the limits of the judicial power, but Congress prescribes how much of it is to be exercised by the inferior federal courts.⁶¹ The judicial power delegated by the constitution does not vest *ipso facto* in the courts which are created by Congress under this clause; they can exercise only such power as Congress sees fit to confer.⁶² The judicial power remains dormant until some act of Congress shall call it into action by designating the particular tribunal or tribunals which shall be authorized to exercise it,⁶³ and except in cases specially enumerated in the constitution the distribution of this power is entirely within the control of Congress.⁶⁴ In certain instances the power may be withdrawn by Congress, even in pending cases.⁶⁵ The distribution of the powers conferred is governed by the laws which constituted the courts.⁶⁶

The general government has entire authority to appoint and commission all courts, magistrates and officers to carry out its laws,⁶⁷ but Congress cannot confer judicial power upon any but judicial bodies created by itself.^{67a} It cannot itself assume

91 U. S. 91, 23 L. ed. 224; *County of Livingston v. Darlington*, 101 U. S. 416, 25 L. ed. 1015; *Brass v. North Dakota*, 153 U. S. 403, 14 S. Ct. 857, 38 L. ed. 757; *Li Sing v. United States*, 180 U. S. 495, 21 S. Ct. 449, 45 L. ed. 634; *Treat v. White*, 181 U. S. 269, 21 S. Ct. 611, 45 L. ed. 853.

⁶¹ *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *McIntire v. Wood*, 7 Cr. 506, 3 L. ed. 420; *Kendall v. United States*, 12 Pet. 616, 9 L. ed. 1181; *Cary v. Curtis*, 3 How. 245, 11 L. ed. 576.

⁶² *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *McClung v. Silliman*, 6 Wheat. 604, 5 L. ed. 840; *Gaines v. Fuentes*, 92 U. S. 18, 23 L. ed. 524.

⁶³ *McClung v. Silliman*, 6 Wheat. 604, 5 L. ed. 840; *Bank of United States v. Roberts*, 4 Conn. 323, Fed. Cas. No. 934; *Bank of United States v. Northumberland Bank*, 4 Conn. 333, 4 Wash. C. C. 108, Fed. Cas. No. 931.

⁶⁴ *Johnson Co. v. Wharton*, 152 U. S. 260, 14 S. Ct. 608, 38 L. ed. 429.

⁶⁵ *Ex parte Yerger*, 8 Wall. 104, 19 L. ed. 332.

⁶⁶ *Smith v. Jackson*, 1 Paine, 453, Fed. Cas. No. 13,064; *Moffat v. Soley*, 2 Paine, 103, Fed. Cas. No. 9688; *Shute v. Davis*, Pet. C. C. 431, Fed. Cas. No. 12,828.

⁶⁷ *Ex parte Stephens*, 70 Mass. 559.

^{67a} *Martin v. Hunter*, 1 Wheat. 330, 4 L. ed. 97.

judicial powers,⁶⁸ nor can it delegate any such power to an executive officer.⁶⁹ So appeals from the exercise of a judicial power cannot be taken to an executive officer, but only to an appellate court.⁷⁰ There is nothing in this clause, however, which would prevent a ministerial officer, or person directed by law, from doing an act necessary to bring a person before a court possessing jurisdiction over him.⁷¹ Power conferred upon a special tribunal will not, as a general rule, oust the power of a court of general jurisdiction in the absence of a clear intention to that effect to be gathered from the statute or by necessary implication.⁷²

— Jurisdiction.

The jurisdiction of the supreme court is pointed out in the constitution;⁷³ its original jurisdiction extends only to those cases specified in article III, section 2, clause 2,⁷⁴ and under that clause its appellate jurisdiction is to be defined and regulated by Congress.⁷⁵ The jurisdiction of the federal courts is limited by the constitution.⁷⁶ The vesting of judicial power is imperative,⁷⁷ and the power to establish courts and confer jurisdiction upon them is unlimited;⁷⁸ but the courts thus

⁶⁸ *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. ed. 377; *Angle v. Chicago etc. Ry. Co.*, 151 U. S. 20, 14 S. Ct. 240, 38 L. ed. 55.

⁶⁹ *Andrews v. Hovey*, 124 U. S. 717, 8 S. Ct. 676, 31 L. ed. 557; *Beatty v. United States*, 1 Dev. 231.

⁷⁰ *Gordon's Case*, 7 Ct. of Cl. 1.

⁷¹ *Prigg v. Commonwealth*, 16 Pet. 539, 10 L. ed. 1060; *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169; *Ex parte Martin*, 2 Paine, 348, Fed. Cas. No. 9154; *Ex parte Gist*, 26 Ala. 156; *Ex parte Pool*, 2 Va. Cas. 276.

⁷² *Fidelity Trust Co. v. Gill Car. Co.*, 25 Fed. 737.

⁷³ *Smith v. Jackson*, 1 Paine, 453, Fed. Cas. No. 13,064.

⁷⁴ *Martia v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

⁷⁵ *Holmes v. Jennison*, 14 Pet. 540, 10 L. ed. 579; *Decatur v. Paulding*, 14 Pet. 612, 10 L. ed. 559; *United States v. American Bell Telephone Co.*, 159 U. S. 549, 16 S. Ct. 60, 40 L. ed. 255.

⁷⁶ *Chisholm v. Georgia*, 2 Dall. 432, 1 L. ed. 440; *Hodgson v. Bowerbank*, 5 Cr. 304, 3 L. ed. 308.

⁷⁷ *Martin v. Hunter*, 1 Wheat. 328, 4 L. ed. 97; *Anderson v. Dunn*, 6 Wheat. 214, 5 L. ed. 242.

⁷⁸ *Mayor v. Cooper*, 6 Wall. 251, 18 L. ed. 851.

created possess no jurisdiction but what is given them by the power which creates them.⁷⁹ The creation of the courts does not, ipso facto, confer any jurisdiction; positive legislation to that end is necessary.⁸⁰ Congress may say what and how much shall vest in one inferior court and what in another.⁸¹

"Inferior courts" are of special and limited authority erected on such principles that their proceedings must show their jurisdiction,⁸² their judgments being entirely disregarded for this purpose,⁸³ and whose judgments are subject to revision by an appellate court.⁸⁴ Their jurisdiction must appear of record.⁸⁵ Their jurisdiction depends exclusively on the constitution and the terms of statutes passed in pursuance thereof,⁸⁶ or on the terms of a treaty.^{86a}

⁷⁹ *United States v. Hudson*, 7 Cr. 33, 3 L. ed. 259.

⁸⁰ *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *McClung v. Silliman*, 6 Wheat. 604, 5 L. ed. 840; *Cary v. Curtis*, 3 How. 245, 11 L. ed. 576; *Fountain v. Ravenel*, 17 How. 384, 15 L. ed. 80; *Johnson Co. v. Wharton*, 152 U. S. 260, 14 S. Ct. 608, 38 L. ed. 429.

⁸¹ *United States v. New Bedford Bridge*, 1 Wood. & M. 437, Fed. Cas. No. 15,867.

⁸² *Cuddy, Petitioner*, 131 U. S. 284, 9 S. Ct. 703, 33 L. ed. 154.

⁸³ *Grignon v. Astor*, 2 How. 341, 11 L. ed. 283; *Kemp's Lessee v. Kennedy*, 5 Cr. 185, 3 L. ed. 70.

⁸⁴ *Kemp's Lessee v. Kennedy*, 5 Cr. 185, 3 L. ed. 70; *Ex parte Watkins*, 3 Pet. 203, 7 L. ed. 650; *Nugent v. State*, 18 Ala. 52.

⁸⁵ *Grace v. American Cent. Ins. Co.*, 109 U. S. 283, 3 S. Ct. 207, 27 L. ed. 932; *Bors v. Preston*, 111 U. S. 255, 4 S. Ct. 408, 28 L. ed. 419; *Mansfield etc. Ry. v. Swan*, 111 U. S. 382, 4 S. Ct. 511, 28 L. ed. 462; *Continental Ins. Co. v. Rhoads*, 119 U. S. 239, 7 S. Ct. 193, 30 L. ed. 380; *King Bridge Co. v. Otoe Co.*, 120 U. S. 226, 7 S. Ct. 552, 31 L. ed. 514; *Lehigh Min. Co. v. Kelly*, 160 U. S. 337, 16 S. Ct. 311, 40 L. ed. 444; *Hanford v. Davies*, 163 U. S. 279, 16 S. Ct. 1053, 41 L. ed. 157; *Adams v. Commissioners*, 23 Fed. 212; *United States v. American Bell Tel. Co.*, 29 Fed. 33; *Simon v. House*, 46 Fed. 219; *Tug River Coal etc. Co. v. Brigel*, 67 Fed. 627; *Wrisley v. Rouse Soap Co.*, 90 Fed. 6; *Blair v. Silver etc. Mines*, 93 Fed. 335.

⁸⁶ *Mossman v. Higgenson*, 4 Dall. 14, 1 L. ed. 720; *Hodgson v. Bowerbank*, 5 Cr. 303, 3 L. ed. 308; *United States Bank v. Deveaux*, 5 Cr. 86, 3 L. ed. 38; *American Ins. Co. v. Cotton*, 1 Pet. 545, 7 L. ed. 242; *Livingston v. Jefferson*, 1 Brock. 203, Fed. Cas. No. 8411; *United States v. Drennen*, Hemp. 320, Fed. Cas. No. 14,992; *United States v. Alberty*, Hemp. 444, Fed. Cas. No. 14,426.

^{86a} *United States v. New Bedford Bridge*, 1 Wood. & M. 437, Fed.

The inferior federal courts contemplated by this clause are not inferior in the technical sense of that term, but they are courts of limited jurisdiction,⁸⁷ and they can exercise only that jurisdiction which is conferred upon them by act of Congress,⁸⁸ either expressly or by necessary implication.⁸⁹ As an instance of a power necessarily implied, the power to punish for contempt is deemed to be inherent.⁹⁰ The inferior federal courts cannot exercise common-law jurisdiction,⁹¹ nor proceed by information in criminal cases unless the power is granted by Congress.⁹² Their respective jurisdictions must be defined by Congress,⁹³ and cannot be enlarged or restricted by state laws.⁹⁴

Cas. No. 15,867; *In re Scheazle*, 1 Wood. & M. 66, Fed. Cas. No. 12,734; *Smith v. Jackson*, 1 Paine, 453, Fed. Cas. No. 13,064.

⁸⁷ *Kemp's Lessee v. Kennedy*, 5 Cr. 185, 3 L. ed. 70; *McCormick v. Sullivan*, 10 Wheat. 199, 6 L. ed. 300; *Kennedy v. Georgia State Bank*, 8 How. 612, 12 L. ed. 1209; *Cuddy, Petitioner*, 131 U. S. 284, 9 S. Ct. 703, 33 L. ed. 154.

⁸⁸ *Ex parte Cabrera*, 1 Wash. C. C. 235, Fed. Cas. No. 2278; *Magill v. Parsons*, 4 Conn. 325.

⁸⁹ *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *Stuart v. Easton*, 156 U. S. 47, 15 S. Ct. 268, 39 L. ed. 341; *Cissel v. McDonald*, 16 Blatchf. 151, Fed. Cas. No. 2729; *United States v. Tawanga-ca, Hemp*, 304, Fed. Cas. No. 16,435.

⁹⁰ *United States v. Hudson*, 7 Cr. 34, 3 L. ed. 259; *Ex parte Terry*, 128 U. S. 302, 9 S. Ct. 79, 32 L. ed. 405; *In re Debs*, 158 U. S. 596, 15 S. Ct. 911, 39 L. ed. 1092.

⁹¹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *United States v. Hudson*, 7 Cr. 32, 3 L. ed. 259; *United States v. Coolidge*, 1 Wheat. 415, 4 L. ed. 124; *United States v. Bevans*, 3 Wheat. 336, 4 L. ed. 404; *In re Barry*, 136 U. S. 609, 42 Fed. 122. But see *United States v. Ravara*, 2 Dall. 297, Fed. Cas. No. 16,122; *United States v. Worrall*, 2 Dall. 384, Fed. Cas. No. 16,766.

⁹² *United States v. Joe*, 4 Chic. L. N. 105, Fed. Cas. No. 15,478.

⁹³ *Osborne v. Bank of United States*, 9 Wheat. 738, 6 L. ed. 204; *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *McIntire v. Wood*, 7 Cr. 506, 3 L. ed. 420; *Kendall v. United States*, 12 Pet. 616, 9 L. ed. 1181; *Cary v. Curtis*, 3 How. 245, 11 L. ed. 576; *Sheldon v. Sill*, 8 How. 448, 12 L. ed. 1147; *Gaines v. Fuentes*, 92 U. S. 13, 23 L. ed. 524.

⁹⁴ *United States v. Peters*, 5 Cr. 38, 3 L. ed. 53; *Steamboat Orleans v. Phoebus*, 11 Pet. 184, 9 L. ed. 677; *Toland v. Sprague*,

Notwithstanding Congress may adopt state procedure for the federal courts, state legislation prescribing modes of redress cannot, after adoption, operate to deprive the federal courts of jurisdiction conferred by citizenship of the parties to an action.⁹⁵ Jurisdiction cannot be conferred on the courts by stipulation of the parties.⁹⁶

Congress may consent to a second trial of a claim against the United States, although a judgment has been rendered thereon for the government.⁹⁷ It may invest inferior courts with power to issue mandamus,⁹⁸ but it cannot empower a commissioner to commit a person for an alleged contempt.⁹⁹ The federal courts have power to issue writs only when necessary in aid of their jurisdiction in a case pending,^{99a} and they can apply the writ of habeas corpus to a person in jail only when he is confined under and by the authority of the United States.¹⁰⁰ In such case, the federal courts have exclusive jurisdiction, and habeas corpus cannot issue from a state court.¹⁰¹ Congress may provide for the appointment of a board of land commissioners to settle private land claims.¹⁰²

12 Pet. 330, 9 L. ed. 1093; *Cowles v. Mercer County*, 7 Wall. 122, 19 L. ed. 86; *Lincoln County v. Luning*, 133 U. S. 530, 10 S. Ct. 363, 33 L. ed. 706; *Leadville Coal Co. v. McCreery*, 141 U. S. 477, 12 S. Ct. 28, 35 L. ed. 824; *Mexican Central Ry. Co. v. Pinckney*, 149 U. S. 194, 13 S. Ct. 859, 37 L. ed. 699.

⁹⁵ *Chicot Co. v. Sherwood*, 148 U. S. 534, 13 S. Ct. 695, 37 L. ed. 546.

⁹⁶ *Byers v. McAuley*, 149 U. S. 618, 13 S. Ct. 906, 37 L. ed. 867; *Olds Wagon Works v. Benedict*, 67 Fed. 1; *Municipal Inv. Co. v. Gardiner*, 62 Fed. 955; *King v. McLean Asylum*, 64 Fed. 352, 26 L. R. A. 784.

⁹⁷ *Nock v. United States*, 2 Ct. of Cl. 451.

⁹⁸ *Kendall v. United States*, 12 Pet. 626, 9 L. ed. 1181.

⁹⁹ *Ex parte Doll*, 7 Phila. 595, Fed. Cas. No. 3968.

^{99a} *Ex parte Everts*, 1 Bond, 178, Fed. Cas. No. 4581.

¹⁰⁰ *Coleman v. Tennessee*, 97 U. S. 519, 24 L. ed. 1118; *In re Burns*, 136 U. S. 590, 10 S. Ct. 850, 34 L. ed. 500; *Baker v. Grice*, 169 U. S. 290, 18 S. Ct. 323, 12 L. ed. 748.

¹⁰¹ *Duncan v. Darst*, 1 How. 308, 11 L. ed. 139; *Ableman v. Booth*, 21 How. 523, 16 L. ed. 169; *Tarble's Case*, 13 Wall. 402, 20 L. ed. 597; *Robb v. Connolly*, 111 U. S. 639, 4 S. Ct. 544, 28 L. ed. 542.

¹⁰² *United States v. Ritchie*, 17 How. 530, 15 L. ed. 236.

Once jurisdiction has been granted to the federal courts, it rests with the courts themselves to determine whether a particular case comes within that jurisdiction.¹⁰³ The judicial power resting in courts cannot be denied them, and any act which has that effect in prescribing rules of decision is void.¹⁰⁴ New rights and remedies may have the effect to increase the business of a court; but that in no proper sense increases its jurisdiction.¹⁰⁵ To give jurisdiction to a federal court it is sufficient that the jurisdiction may be found in the constitution or the law, but the two must co-operate, the constitution as the fountain, and the laws of Congress as the streams which convey the jurisdiction to the court.¹⁰⁶

— Territorial and Provisional Courts.

The courts of a territory, although they derive their jurisdiction from Congress,¹⁰⁷ are not United States courts contemplated by this article, and so do not come within the purview of acts of Congress which speak of "courts of the United States" only.¹⁰⁸ These courts are not constitutional in the sense that the judicial power conferred by the constitution can be deposited in them.¹⁰⁹ The jurisdiction with which they are invested is not a part of that judicial power defined in this article, but is conferred in the execution of those general powers which Congress possesses over the territories.¹¹⁰

¹⁰³ *United States v. Peters*, 5 Cr. 136, 3 L. ed. 53; *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169; *Freeman v. Howe*, 24 How. 459, 16 L. ed. 749; *Ex parte Tyler*, 149 U. S. 164, 13 S. Ct. 785, 37 L. ed. 689; *Missouri Pac. Ry. Co. v. Fitzgerald*, 160 U. S. 582, 16 S. Ct. 389, 40 L. ed. 536.

¹⁰⁴ *Klein's Case*, 7 Ct. of Cl. 240; *Witkowski's Case*, 7 Ct. of Cl. 393.

¹⁰⁵ *Buford v. Holley*, 28 Fed. 680.

¹⁰⁶ *United States v. Burlington etc. Ferry Co.*, 21 Fed. 331.

¹⁰⁷ *The City of Panama*, 101 U. S. 460, 25 L. ed. 1061.

¹⁰⁸ *Good v. Martin*, 95 U. S. 98, 24 L. ed. 341; *The City of Panama*, 101 U. S. 460, 25 L. ed. 1061; *McAllister v. United States*, 141 U. S. 174, 11 S. Ct. 949, 35 L. ed. 693; *United States v. McMillan*, 165 U. S. 510, 41 L. ed. 805.

¹⁰⁹ *American Ins. Co. v. Cotton*, 1 Pet. 546, 7 L. ed. 242.

¹¹⁰ *American Ins. Co. v. Cotton*, 1 Pet. 546, 7 L. ed. 242; *United States v. Coe*, 155 U. S. 85, 15 S. Ct. 19, 39 L. ed. 76; *Arizona v. Duf-*

The fact that the judges of territorial courts are appointed by the President under act of Congress does not make the courts which they hold courts of the United States.¹¹¹ Broadly speaking, however, the territorial district courts are dual in their nature and sit both as territorial and federal courts.¹¹² Congress may define the jurisdiction of territorial courts, or delegate the authority to the territorial government.¹¹³

This article does not make any provision for abnormal conditions in conquered territory, nor permit the establishment by Congress of courts in insurrectionary districts.¹¹⁴ In the performance of the duty of the national government, as a belligerent, to protect persons and property, the President has power, incident to military occupation to establish provisional courts at the seat of war;¹¹⁵ but such courts cannot decide cases of prize of war as ordinary courts of admiralty.¹¹⁶

Authority of State Courts.

Courts of the United States and of the states are independent of each other in matters within their respective jurisdictions,¹¹⁷ the jurisdiction of the state courts not having been affected by the grant of judicial power to the general government, except where such jurisdiction would be incompatible with the powers granted to the United States.¹¹⁸ In some

field, 1 *Ariz. Ter.* 69, 25 *Pac.* 476. See, also, *Breuner v. Porter*, 9 *How.* 240, 13 *L. ed.* 119.

¹¹¹ *Clinton v. Englebrecht*, 13 *Wall.* 447, 20 *L. ed.* 659; *McAllister v. United States*, 141 *U. S.* 174, 11 *S. Ct.* 949, 35 *L. ed.* 693.

¹¹² *Gon-Shay-Ee*, Petitioner, 130 *U. S.* 349, 9 *S. Ct.* 542, 32 *L. ed.* 973; *United States v. Pridgeon*, 153 *U. S.* 58, 14 *S. Ct.* 746, 38 *L. ed.* 631.

¹¹³ *Leitensdorfer v. Webb*, 20 *How.* 176, 15 *L. ed.* 891.

¹¹⁴ *Mechanics' etc. Bank v. Union Bank*, 22 *Wall.* 296, 22 *L. ed.* 871; *The Grapeshot*, 9 *Wall.* 132, 19 *L. ed.* 651.

¹¹⁵ *The Grapeshot*, 9 *Wall.* 132, 19 *L. ed.* 651; *Mechanics' etc. Bank v. Union Bank*, 22 *Wall.* 296, 22 *L. ed.* 871; *Lewis v. Cocks*, 23 *Wall.* 469, 23 *L. ed.* 70.

¹¹⁶ *Jecker v. Montgomery*, 13 *How.* 515, 14 *L. ed.* 240.

¹¹⁷ *Taylor v. Carryl*, 20 *How.* 597, 15 *L. ed.* 1028; *Supervisors v. Durant*, 9 *Wall.* 418, 19 *L. ed.* 732.

¹¹⁸ *Martin v. Hunter*, 1 *Wheat.* 304, 4 *L. ed.* 97; *Houston v. Moore*,

cases from their character, the federal judicial power is necessarily exclusive of all state authority; in others it may be made so at the option of Congress, or it may be exercised concurrently with that of the states.¹¹⁹

Where jurisdiction may be conferred upon federal courts, it may be made exclusive;¹²⁰ but if exclusive jurisdiction be neither express nor implied, state courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it.¹²¹ If the jurisdiction of the federal courts is paramount in certain cases the state courts are prohibited from taking any cognizance of such cases,¹²² and all proceedings in a state court are void.¹²³ Thus a statute authorizing proceedings in a state court in admiralty causes is unconstitutional.¹²⁴ Congress cannot confer jurisdiction on a state court.¹²⁵

The jurisdiction of a state is coextensive with its territory,¹²⁶

5 Wheat. 27, 5 L. ed. 19; *Teal v. Felton*, 12 How. 284, 13 L. ed. 990; *Clafin v. Houseman*, 93 U. S. 136, 23 L. ed. 833; *In re Abraham*, 93 Fed. 778; *State v. Randall*, 2 Aik. 89; *Delafield v. State*, 2 Hill, 159; *United States v. Lathrop*, 17 Johns. 4; *Jackson v. Rose*, 2 Va. Cas. 34.

¹¹⁹ *Railway Co. v. Whitton*, 13 Wall. 288, 20 L. ed. 571; *The Steamship Oregon*, 14 Saw. 463, 45 Fed. 77; *Hartman v. Fishbeck*, 18 Fed. 295; *Wyman v. Mathews*, 53 Fed. 680; *Prentice v. Duluth Storage Co.*, 58 Fed. 442.

¹²⁰ *Martin v. Hunter*, 1 Wheat. 337, 4 L. ed. 97; *Clafin v. Houseman*, 93 U. S. 136, 23 L. ed. 833.

¹²¹ *Clafin v. Houseman*, 93 U. S. 136, 23 L. ed. 833.

¹²² *Slocum v. Mayberry*, 2 Wheat. 1, 4 L. ed. 169; *Osborn v. Bank of United States*, 9 Wheat. 738, 6 L. ed. 204; *United States v. Peters*, 5 Cr. 115, 3 L. ed. 53; *Duncan v. Darst*, 1 How. 301, 11 L. ed. 139; *McNutt v. Bland*, 2 How. 16, 11 L. ed. 159; *Bank of Augusta v. Earle*, 13 Pet. 590, 10 L. ed. 274.

¹²³ *Cohen v. Solomon*, 66 Fed. 411.

¹²⁴ *The Moses Taylor*, 4 Wall. 427, 18 L. ed. 397; *The Hine v. Trevor*, 4 Wall. 555, 18 L. ed. 451; *The Lottawanna*, 21 Wall. 580, 22 L. ed. 654; *The J. E. Rumbell*, 148 U. S. 12, 13 S. Ct. 498, 37 L. ed. 345; *Crawford v. The Caroline Reed*, 42 Cal. 469; *Bird v. The Josephine*, 39 N. Y. 19; *Brookman v. Hamill*, 43 N. Y. 554.

¹²⁵ *Houston v. Moore*, 5 Wheat. 27, 5 L. ed. 19; *Huber v. Reilly*, 53 Pa. St. 112.

¹²⁶ *United States v. Bevans*, 3 Wheat. 387, 4 L. ed. 404; *Pennoyer v. Neff*, 95 U. S. 722, 24 L. ed. 565; *Arndt v. Griggs*, 134 U. S. 323,

and the legislature may confer on the state courts jurisdiction within those limits.¹²⁷ But the legislature cannot confer any jurisdiction on the federal courts nor prescribe the means or mode of its exercise.¹²⁸

No part of the criminal jurisdiction can be delegated by Congress to state courts,¹²⁹ but the same act may, as to its character and tendencies and the consequences involved, constitute an offense against both the state and federal governments, and may draw to its commission the penalties denounced by either,¹³⁰ and a crime not made an offense under federal law is cognizable in a state court.¹³¹ So state courts may punish for counterfeiting under a state law unless exclusive jurisdiction is vested in the federal courts,¹³² and a state may provide a penalty for the offense of circulating counterfeit money.¹³³ So, also, a state court has jurisdiction to punish for the forgery of a land warrant, where it has not been made a crime by act of Congress,¹³⁴ or may commit a prisoner to be delivered over for prosecution to the United States.¹³⁵ A state court may en-

10 S. Ct. 557, 33 L. ed. 918; *Wilson v. Seligman*, 144 U. S. 44, 12 S. Ct. 541, 36 L. ed. 338.

¹²⁷ *Galpin v. Gage*, 18 Wall. 367, 21 L. ed. 959; *Pennoyer v. Neff*, 95 U. S. 720, 24 L. ed. 565.

¹²⁸ *Palmer v. Allen*, 7 Cr. 565, 3 L. ed. 436; *Ogden v. Saunders*, 12 Wheat. 367, 6 L. ed. 606; *Duncan v. Darst*, 1 How. 305, 11 L. ed. 139; *Clark v. Smith*, 13 Pet. 203, 10 L. ed. 123; *Kearney v. Farmers' etc. Bank*, 16 Pet. 94, 10 L. ed. 897; *St. Louis etc. Ry. v. Vickers*, 122 U. S. 363, 7 S. Ct. 1216, 30 L. ed. 1161.

¹²⁹ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *State v. Wells*, 2 Hill (S. C.), 687; *Huber v. Reilly*, 53 Pa. St. 112; *State v. McBride, Rice*, 400; *Commonwealth v. Feely*, 1 Va. Cas. 321.

¹³⁰ *United States v. Marigold*, 9 How. 569, 13 L. ed. 257; *Cross v. North Carolina*, 132 U. S. 139, 10 S. Ct. 47, 33 L. ed. 287; *Crossley v. California*, 168 U. S. 641, 18 S. Ct. 242, 42 L. ed. 610.

¹³¹ *State v. Buchanan*, 5 Har. & J. 317, 9 Am. Dec. 534.

¹³² *White v. Commonwealth*, 4 Binn. 418; *State v. Randall*, 2 Aik. 89; *State v. Tutt*, 2 Bail. 44, 21 Am. Dec. 508.

¹³³ *Fox v. Ohio*, 5 How. 433, 4 L. ed. 213.

¹³⁴ *Commonwealth v. Schaffer*, 4 Dall. App. 86.

¹³⁵ *Prigg v. Commonwealth*, 16 Pet. 539, 10 L. ed. 1060; *Ex parte Gist*, 26 Ala. 156; *Ex parte Smith*, 5 Cow. 273; *Ex parte Martin*, 2 Paine, 348, Fed. Cas. No. 9154; *Ex parte Pool*, 2 Va. Cas. 276.

tain an action to recover a penalty for the violation of a federal statute.¹³⁶

Where federal and state courts have concurrent jurisdiction in a civil or criminal case the tribunal which first obtains jurisdiction holds it, to the exclusion of the other, until its duty is performed;¹³⁷ the acquisition of jurisdiction by the one divests the other of all jurisdiction.¹³⁸ The fact that the subject of interstate commerce is beyond the legislative control of the states does not, *ipso facto*, prevent state courts from exercising jurisdiction over cases arising from such commerce.¹³⁹

The sphere of action appropriated to the United States is beyond the reach of the judicial process issued by a state judge or a state court,¹⁴⁰ and the same is true of state courts, which within their jurisdiction cannot be interfered with by federal process.¹⁴¹ So a state court cannot grant an injunction against the enforcement of a remedy adjudged by a federal court which acquired jurisdiction first;¹⁴² nor enjoin the service of process in a suit first instituted in a federal court.¹⁴³ A state court

¹³⁶ *Claffin v. Houseman*, 93 U. S. 136, 23 L. ed. 833; *Stearns v. United States*, 2 Paine, 300, Fed. Cas. No. 13,341; *Buckwalter v. United States*, 11 Serg. & R. 193. But see *Ely v. Peck*, 7 Conn. 239; *Davidson v. Champlin*, 7 Conn. 244; *Haney v. Sharp*, 1 Dana, 442.

¹³⁷ *Smith v. McIver*, 9 Wheat. 535, 6 L. ed. 152; *Peck v. Jenness*, 7 How. 624, 12 L. ed. 841; *Buck v. Colbath*, 3 Wall. 345, 18 L. ed. 257; *Pulliam v. Osborne*, 17 How. 475, 15 L. ed. 154; *Taylor v. Taintor*, 16 Wall. 370, 21 L. ed. 287; *Farmers' L. etc. Co. v. Lake St. etc. R. R. Co.*, 177 U. S. 62, 20 S. Ct. 564, 44 L. ed. 667.

¹³⁸ *Covell v. Heyman*, 111 U. S. 182, 4 S. Ct. 355, 28 L. ed. 390; *Moran v. Sturges*, 154 U. S. 274, 14 S. Ct. 1024, 38 L. ed. 981.

¹³⁹ *Murray v. Chicago etc. Ry. Co.*, 62 Fed. 24.

¹⁴⁰ *Ableman v. Booth*, 21 How. 516, 16 L. ed. 169; *Riggs v. Johnson County*, 6 Wall. 199, 18 L. ed. 768; *Moran v. Sturges*, 154 U. S. 286, 4 S. Ct. 1019, 38 L. ed. 981.

¹⁴¹ *Amy v. Supervisors*, 11 Wall. 138, 20 L. ed. 101; *Watson v. Jones*, 13 Wall. 720, 20 L. ed. 666; *Nougue v. Clapp*, 101 U. S. 555, 25 L. ed. 1026.

¹⁴² *Central Nat. Bank v. Stevens*, 169 U. S. 462, 18 S. Ct. 403, 42 L. ed. 807.

¹⁴³ *Farmers' L. etc. Co. v. Lake St. etc. R. R. Co.*, 177 U. S. 61, 20 S. Ct. 564, 44 L. ed. 667.

has no jurisdiction of a proceeding to deprive a federal court receiver of the possession of property committed to him,¹⁴⁴ nor has a state court jurisdiction of a suit against a federal court receiver for his misconduct.¹⁴⁵ Property in the possession of a court or its officer cannot be disturbed under process of a court of concurrent jurisdiction, state or federal.¹⁴⁶

Habeas corpus cannot issue from a state court to secure the release of a person held under the authority of federal laws,¹⁴⁷ but subject to the exclusive authority of the federal courts to determine the legality of a detention under federal authority, state courts may determine the legality of the restraint of a person held within state limits, although depending on the federal constitution and laws.¹⁴⁸ The extent of the federal courts' power to inquire into the legality of restraint under the order of a state court under state laws is limited to a determination of the question whether the restraint is in violation of the federal constitution.¹⁴⁹

Removal and Transfer of Causes.

Under this clause Congress may provide for the transfer of a suit from one inferior tribunal to another,¹⁵⁰ and for the removal from state to federal courts of causes to which the ju-

¹⁴⁴ *Calhoun v. Lanoux*, 127 U. S. 640, 8 S. Ct. 1345, 32 L. ed. 297.

¹⁴⁵ *Baggs v. Martin*, 179 U. S. 209, 21 S. Ct. 109, 45 L. ed. 155.

¹⁴⁶ *Hagan v. Lucas*, 10 Pet. 404, 9 L. ed. 470; *Tua v. Carriera*, 117 U. S. 208, 6 S. Ct. 565, 29 L. ed. 855; *Moran v. Sturges*, 154 U. S. 274, 14 S. Ct. 1019, 38 L. ed. 981; *In re Johnson*, 167 U. S. 125, 17 S. Ct. 735, 42 L. ed. 103.

¹⁴⁷ *Duncan v. Darst*, 1 How. 308, 11 L. ed. 139; *Ableman v. Booth*, 21 How. 523, 16 L. ed. 169; *Tarble's Case*, 13 Wall. 402, 20 L. ed. 597.

¹⁴⁸ *Robb v. Connolly*, 111 U. S. 639, 4 S. Ct. 544, 28 L. ed. 542; *Cook v. Hart*, 146 U. S. 195, 13 S. Ct. 44, 36 L. ed. 934.

¹⁴⁹ *In re Wood*, 140 U. S. 289, 11 S. Ct. 738, 35 L. ed. 505; *Cook v. Hart*, 146 U. S. 194, 13 S. Ct. 40, 36 L. ed. 934; *Bergeman v. Backer*, 157 U. S. 659, 15 S. Ct. 727, 39 L. ed. 845; *Draper v. United States*, 164 U. S. 247, 17 S. Ct. 107, 41 L. ed. 419.

¹⁵⁰ *Stuart v. Laird*, 1 Cr. 309, 2 L. ed. 115; *United States v. Ritchie*, 17 How. 530, 15 L. ed. 236; *Fremont v. United States*, 17 How. 542, 15 L. ed. 241; *United States v. Haynes*, 29 Fed. 696.

dicial power of the United States extends.¹⁵¹ This power is not to be found expressed in any grant to Congress; it is to be implied from the power of Congress to distribute the judicial power, and affords an indirect means by which the federal courts may acquire jurisdiction.¹⁵² Congress has no power, however, to remit to a special circuit court the business pending for trial before the stated circuit court.¹⁵³ The transfer of suits pending in a provisional court is also within the power of Congress.¹⁵⁴

A cause may be removed from a state to a federal court where it arises under the constitution and laws of the United States, as well as where it arises between citizens of different states,¹⁵⁵ and it is for Congress to say at what time the right shall be invoked, and at what stage of the proceedings a case may be removed.¹⁵⁶ Congress may authorize removal before or after judgment, and regulate the method,¹⁵⁷ and may prescribe a rule of limitations for removal which shall be binding on both state and federal courts.¹⁵⁸

¹⁵¹ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Mayor v. Cooper*, 6 Wall. 252, 18 L. ed. 851; *Railroad Co. v. Whitton*, 13 Wall. 288, 20 L. ed. 571; *Insurance Co. v. Dunn*, 19 Wall. 226, 22 L. ed. 68; *Murray v. Patrie*, 5 Blatchf. 343, Fed. Cas. No. 9967; *Fisk v. Union Pacific R. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 362; *Andrews v. Garrett*, 1 Flipp. 448, Fed. Cas. No. 375; *Clark v. Dick*, 1 Dill 8, Fed. Cas. No. 2818; *Johnson v. Monell*, Woolw. 390, Fed. Cas. No. 7399; *Birdseye v. Shaeffer*, 37 Fed. 824; *McCormick v. Humphrey*, 27 Ind. 144; *Tod v. Fairfield*, 15 Ohio St. 377; *Hodgson v. Millward*, 3 Grant, 418; *Kulp v. Ricketts*, 3 Grant, 420; *Greely v. Townsend*, 25 Cal. 604.

¹⁵² *Railroad Co. v. Whitton*, 13 Wall. 270, 20 L. ed. 571; *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

¹⁵³ *United States v. Hamilton*, 3 Dall. 18, 1 L. ed. 490.

¹⁵⁴ *Leitensdorfer v. Webb*, 20 How. 182, 15 L. ed. 891; *The Grapeshot*, 7 Wall. 564, 19 L. ed. 89; *Edwards v. Tanneret*, 12 Wall. 449, 20 L. ed. 415.

¹⁵⁵ *Boom Co. v. Patterson*, 98 U. S. 406, 25 L. ed. 206; *Ames v. Kansas*, 111 U. S. 461, 4 S. Ct. 437, 28 L. ed. 482; *Kulp v. Ricketts*, 3 Grant, 420.

¹⁵⁶ *Gaines v. Fuentes*, 92 U. S. 10, 23 L. ed. 524.

¹⁵⁷ *Martin v. Hunter*, 1 Wheat. 350, 4 L. ed. 97.

¹⁵⁸ *Mitchell v. Clark*, 110 U. S. 641, 4 S. Ct. 170, 28 L. ed. 279.

A state cannot take away the privilege conferred upon citizens of other states to sue in the federal courts by providing a special remedy in its own courts;¹⁵⁹ nor can a state forbid the removal of causes to the federal courts. So a statute prohibiting foreign corporations from doing business in the state without filing an agreement not to remove causes is void, and an agreement pursuant thereto is not binding.¹⁶⁰ On the other hand, it has been held that as a state may prescribe any terms it sees fit upon which foreign corporations shall do business, and it may provide that in case such a corporation removes a cause to the federal courts, the Secretary of State may revoke its license to do business.¹⁶¹ A statute requiring foreign corporations to submit to service of process may serve to give the proper state courts jurisdiction of foreign corporations.¹⁶² Parties to a suit cannot, by agreement, oust the jurisdiction of the federal courts,¹⁶³ but the right of removal is inconsistent with the voluntary submission to a state court's jurisdiction,¹⁶⁴ and the right may be waived by such submission.¹⁶⁵

¹⁵⁹ *Mason v. Boom Co.*, 3 Wall. Jr. 252, Fed. Cas. No. 9232.

¹⁶⁰ *Insurance Co. v. Morse*, 20 Wall. 458, 22 L. ed. 365; *Doyle v. Continental Ins. Co.*, 94 U. S. 538, 24 L. ed. 148; *Barron v. Burnside*, 121 U. S. 200, 7 S. Ct. 931, 30 L. ed. 915; *Southern Pacific Co. v. Denton*, 146 U. S. 207, 13 S. Ct. 44, 36 L. ed. 942; *Chicago etc. Ry. Co. v. Becker*, 32 Fed. 853; *Bigelow v. Nickerson*, 70 Fed. 121, 30 L. R. A. 336; *Commonwealth v. East Tennessee*, 97 Ky. 244, 30 S. W. 610.

¹⁶¹ *Doyle v. Continental Ins. Co.*, 94 U. S. 540, 24 L. ed. 148; *Phenix Ins. Co. v. Burdett*, 112 Ind. 205, 13 N. E. 705; *State v. Insurance Co.*, 115 Ind. 266, 17 N. E. 578; *State v. Phipps*, 50 Kan. 617, 34 Am. St. Rep. 157, 31 Pac. 1099, 18 L. R. A. 657; *State v. Stone*, 118 Mo. 401, 40 Am. St. Rep. 394, 24 S. W. 166, 25 L. R. A. 243.

¹⁶² *Southern Pacific Co. v. Denton*, 146 U. S. 207, 13 S. Ct. 44, 36 L. ed. 942.

¹⁶³ *Davis v. Packard*, 6 Pet. 41, 8 L. ed. 312, 7 Pet. 276, 8 L. ed. 684; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Martin v. Baltimore etc. R. R. Co.*, 151 U. S. 689, 14 S. Ct. 533, 38 L. ed. 311; *Hobbs v. Manhattan Ins. Co.*, 56 Me. 417, 96 Am. Dec. 472.

¹⁶⁴ *Manning v. Amy*, 140 U. S. 141, 11 S. Ct. 707, 35 L. ed. 386.

¹⁶⁵ *Brooks v. Clark*, 119 U. S. 513, 7 S. Ct. 301, 30 L. ed. 482; *Hanover Bank v. Smith*, 13 Blatchf. 225, Fed. Cas. No. 6035.

— Judges.

This clause removes from Congress all control over the tenure of office of federal judges, and precludes any diminution in their compensation during their term of office.¹⁶⁶ Judges of inferior federal courts established by Congress must be appointed to hold office during good behavior.¹⁶⁷ The extra compensation received by a district judge holding court outside his own district is no part of his official salary.¹⁶⁸ The fees allowed to justices of the peace in the District of Columbia cannot be diminished during their continuance in office.¹⁶⁹ The imposition of a tax upon the salary of a judge is in violation of this clause.¹⁷⁰ A person appointed to be judge of a territorial court is not contemplated by this clause,¹⁷¹ and hence the constitution is not violated by a statute prescribing a fixed term of years for the office of such a judge or authorizing his displacement.¹⁷² The provision that the compensation shall not be reduced accordingly has no application to judges of territorial courts.¹⁷³

¹⁶⁶ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

¹⁶⁷ *United States v. Ferreira*, 13 How. 49, 14 L. ed. 42; *United States v. Todd*, 13 How. 52, note; *Hayburn's Case*, 2 Dall. 410, note, 1 L. ed. 436.

¹⁶⁸ *Benedict v. United States*, 176 U. S. 361, 20 S. Ct. 458, 44 L. ed. 503.

¹⁶⁹ *United States v. Moore*, 3 Cr. 160, 2 L. ed. 397.

¹⁷⁰ *Commonwealth v. Mann*, 5 Watts & S. 415.

¹⁷¹ *Wingard v. United States*, 141 U. S. 201, 11 S. Ct. 959, 35 L. ed. 719.

¹⁷² *American Ins. Co. v. Cotton*, 1 Pet. 546, 7 L. ed. 242; *McAllister v. United States*, 141 U. S. 188, 11 S. Ct. 949, 35 L. ed. 693.

¹⁷³ *Fisher's Case*, 15 Ct. of Cl. 323.

SECTION 2.

JUDICIAL POWERS.

1. Jurisdiction of Courts in general.
2. Of Supreme Court, original and appellate.
3. Jury trials, place of trial.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

Extent of the Judicial Power.

The object of this section is to define the judicial power which the constitution intended to be confined to courts created by Congress.¹ It enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States. When any question respecting them is submitted by a party who asserts his rights in the form prescribed by law, it then becomes a "case" of which the federal courts have cognizance.² "Shall extend" is used in an imperative sense, and imports an absolute grant of power.³ In thus de-

1 *Robertson v. Baldwin*, 165 U. S. 279, 17 S. Ct. 326, 41 L. ed. 715.

2 *Osborne v. United States Bank*, 9 Wheat. 819, 6 L. ed. 204.

3 *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97.

fining the judicial power the constitution contemplates the cases enumerated as being in three distinct classes. In the latter class as to controversies, Congress may qualify the jurisdiction, either original or appellate,⁴ and the grant of jurisdiction over one of the classes does not confer any jurisdiction over either of the other two.⁵ Jurisdiction is the power to hear and determine the subject matter in controversy between the parties to a suit; to adjudicate or exercise judicial power over it.⁶ It has reference (1) to the court's power over the parties; (2) over the subject matter, i. e., the nature of the cause of action; (3) over the property in contest; (4) and to its authority to render judgment.⁷ An affirmative description of jurisdiction implies a negative on the exercise of power not comprehended within it.⁸ How jurisdiction shall be acquired, whether original or appellate, and the mode of procedure, are left to the wisdom of the legislature;⁹ so Congress may give the federal courts original jurisdiction in any case to which appellate jurisdiction extends,¹⁰ and may invest inferior federal courts with jurisdiction over matters in which the supreme court has original, but not exclusive, jurisdiction,¹¹ and lawfully provide for suits, at the option of the parties, on all controversies between citizens of different states.¹²

Congress is empowered to give the federal courts jurisdiction over every case wherein a question within the judicial power is an ingredient.¹³ The questions involved in a case must de-

⁴ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *The Moses Taylor*, 4 Wall. 411, 18 L. ed. 397.

⁵ *American Ins. Co. v. Cotton*, 1 Pet. 545, 7 L. ed. 242.

⁶ *United States v. Arredondo*, 6 Pet. 709, 8 L. ed. 547; *Rhode Island v. Massachusetts*, 12 Pet. 718, 9 L. ed. 1233; *Grignon v. Astor*, 2 How. 338, 11 L. ed. 283; *Ex parte McCardle*, 7 Wall. 514, 19 L. ed. 264; *Windsor v. McVeigh*, 93 U. S. 284, 23 L. ed. 914; *Overby v. Gordon*, 177 U. S. 220, 20 S. Ct. 603, 44 L. ed. 741.

⁷ *Cooper v. Reynolds*, 10 Wall. 316, 19 L. ed. 931.

⁸ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60; *National Exchange Bank v. Peters*, 144 U. S. 573, 12 S. Ct. 767, 36 L. ed. 545.

⁹ *Mayor v. Cooper*, 6 Wall. 247, 18 L. ed. 851.

¹⁰ *Osborne v. Bank of United States*, 9 Wheat. 820, 6 L. ed. 204.

¹¹ *Ames v. Kansas*, 111 U. S. 469, 4 S. Ct. 437, 28 L. ed. 482.

¹² *Gaines v. Fuentes*, 92 U. S. 18, 23 L. ed. 524.

¹³ *Osborne v. United States Bank*, 9 Wheat. 823, 6 L. ed. 204.

termine its character in this respect, and if there are such as to bring the case within the judicial power, it is immaterial that other questions of law or fact are involved.¹⁴ So the judicial power extends to the trial of a revenue officer for an act done in the discharge of his duty;¹⁵ to a suit involving the rights of a railroad company as a corporation of the United States;¹⁶ to a case involving the construction of a bankruptcy law;¹⁷ to a suit involving the application of the interstate commerce act;¹⁸ to a suit by or against a national bank.¹⁹ In all such cases jurisdiction of the federal courts may be made exclusive at the will of Congress.²⁰

The judicial power is the instrument provided for administering security to an officer acting in the discharge of his duty;²¹ the power to declare what the law is.²² It covers every legislative act of Congress,²³ and is the final arbiter in matters involving the construction of the constitution;²⁴ and the federal

14 *Osborne v. United States Bank*, 9 Wheat. 823, 6 L. ed. 204; *Tennessee v. Davis*, 100 U. S. 264, 25 L. ed. 648; *Roberts v. Northern Pac. R. R. Co.*, 158 U. S. 22, 15 S. Ct. 763, 39 L. ed. 873; *Nashville etc. R. R. v. Taylor*, 86 Fed. 177; *Fisk v. Union Pacific R. R. Co.*, 8 Blatchf. 248, Fed. Cas. No. 4828.

15 *Tennessee v. Davis*, 100 U. S. 264, 25 L. ed. 648.

16 *Roberts v. Northern Pacific R. R. Co.*, 158 U. S. 22, 15 S. Ct. 763, 39 L. ed. 873.

17 *Connor v. Scott*, 4 Dill. 247, Fed. Cas. No. 3119.

18 *Toledo etc. R. R. Co. v. Pennsylvania Co.*, 54 Fed. 749, 19 L. B. A. 387.

19 *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Petrie v. Commercial Bank*, 142 U. S. 648, 12 S. Ct. 326, 35 L. ed. 1144; *Ex parte Jones*, 164 U. S. 692, 17 S. Ct. 223, 41 L. ed. 601.

20 *Martin v. Hunter*, 1 Wheat. 337, 4 L. ed. 97; *The Moses Taylor*, 4 Wall. 428, 18 L. ed. 397; *The Glide*, 167 U. S. 615, 17 S. Ct. 933, 42 L. ed. 296.

21 *Hodgson v. Millward*, 3 Grant, 412.

22 *Ex parte McCardle*, 7 Wall. 514, 19 L. ed. 264.

23 *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169; *Mayor v. Cooper*, 6 Wall. 247, 18 L. ed. 851.

24 *Van Horne's Lessee v. Dorrance*, 2 Dall. 304, Fed. Cas. No. 16,857; *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169.

courts may be given by Congress power to construe every law with reference to its validity under the constitution.²⁵ In order that the judicial power may extend to a case arising under the constitution or laws of the United States or a treaty, it must be "a case in law or in equity" in which a right under such constitution, law or treaty is asserted in a court of justice.²⁶ A suit in which a party seeks protection under a law is one arising under that law;²⁷ and where the right of either party to a suit depends upon the validity of an act of Congress, the case is one arising under the constitution.²⁸ The construction of a treaty is deemed to be drawn into question for the purposes of federal jurisdiction where the issue is as to whether an act done or omitted was in conformity to the treaty.²⁹ But the case must really and substantially involve a question contemplated by this clause;³⁰ the mere controverting a right or disputing an act is not necessarily sufficient.³¹

The jurisdiction of the federal courts is exclusive over questions arising under treaties, where such questions are not political.³² As between the legislative and judiciary departments,

²⁵ *Osborne v. United States Bank*, 9 Wheat. 819, 6 L. ed. 204; *Smith v. Adams*, 130 U. S. 174, 9 S. Ct. 564, 32 L. ed. 895; *Interstate Commerce Com. v. Brimson*, 154 U. S. 475, 14 S. Ct. 1132, 38 L. ed. 1047; *Nashville etc. R. R. Co. v. Taylor*, 86 Fed. 172.

²⁶ *Cohens v. Virginia*, 6 Wheat. 379, 5 L. ed. 257; *Minnesota Co. v. St. Paul Co.*, 2 Wall. 634, 17 L. ed. 886; *Railroad Co. v. Mississippi*, 102 U. S. 140, 26 L. ed. 96.

²⁷ *Hodgson v. Millward*, 3 Grant, 412, Fed. Cas. No. 6568; *Kulp v. Ricketts*, 3 Grant, 420.

²⁸ *Patton v. Brady*, 184 U. S. 611, 22 S. Ct. 493, 46 L. ed. 713.

²⁹ *Smith v. Maryland*, 6 Cr. 304, 3 L. ed. 225.

³⁰ *Bier v. McGehee*, 148 U. S. 141, 13 S. Ct. 580, 37 L. ed. 397; *Western Union Tel. Co. v. Ann Arbor R. R. Co.*, 178 U. S. 250, 20 S. Ct. 867, 44 L. ed. 1052; *Gableman v. Peoria etc. Ry. Co.*, 179 U. S. 339, 21 S. Ct. 171, 45 L. ed. 220.

³¹ *Ferry v. King Co.*, 141 U. S. 673, 12 S. Ct. 128, 35 L. ed. 895.

³² *Wilson v. Wall*, 6 Wall. 89, 18 L. ed. 727; *United States v. Reese*, 5 Dill. 409, Fed. Cas. No. 16,137; *Ex parte Leon*, 1 Edm. Sel. Cas. 301; *United States v. Lathrop*, 17 Johns. 9; *United States v. Campbell*, 6 Hall L. J. 113; *Haney v. Sharp*, 1 Dana, 442; *Scharpf v. Schmidt*, 172 Ill. 262, 50 N. E. 184.

however, so far as the provisions of a treaty can become the subject of judicial cognizance, they are subject to acts of Congress passed for their enforcement, modification or repeal.³³

"Cases" Contemplated by this Clause.

The jurisdiction of the federal courts is commensurate with every right and duty created, declared, or necessarily implied by and under the federal constitution and laws.³⁴ A "case" is a question contested before a court of justice,³⁵ and a case in law or equity consists in the right of one party as well as of the other, and it "arises" when its correct decision depends on the construction of the constitution or laws of the United States.³⁶ It is a suit instituted according to the regular course of judicial procedure.³⁷ The interests of the parties must be adverse;³⁸ the clause does not contemplate suits merely to determine abstract principles.³⁹ It is limited to such suits as are between parties and are of a judicial nature,⁴⁰ and does not include purely political questions.⁴¹ When the subject of a

³³ *Head Money Cases*, 112 U. S. 580, 5 S. Ct. 247, 28 L. ed. 798.

³⁴ *Irvine v. Marshall*, 20 How. 564, 15 L. ed. 994.

³⁵ *Martin v. Hunter*, 1 Wheat. 352, 4 L. ed. 97; *Cohens v. Virginia*, 6 Wheat. 407, 5 L. ed. 257; *Ex parte Milligan*, 4 Wall. 113, 19 L. ed. 281; *King v. McLean Asylum*, 64 Fed. 336, 26 L. R. A. 784; *Appleton v. Turnbull*, 84 Me. 76, 24 Atl. 593; *State v. Newell*, 13 Mont. 305, 34 Pac. 29.

³⁶ *Cohens v. Virginia*, 6 Wheat. 407, 5 L. ed. 257; *Railroad Co. v. Mississippi*, 102 U. S. 140, 26 L. ed. 96; *Ex parte Carll*, 106 U. S. 522, 1 S. Ct. 535, 27 L. ed. 288; *United States v. Williams*, 4 Cr. C. C. 372, Fed. Cas. No. 16,712.

³⁷ *Marbury v. Madison*, 1 Cr. 138, 2 L. ed. 60; *Owings v. Norwood's Lessee*, 5 Cr. 348, 3 L. ed. 120; *Martin v. Hunter*, 1 Wheat. 352, 4 L. ed. 97.

³⁸ *Wood-Paper Co. v. Heft*, 8 Wall. 336, 19 L. ed. 379.

³⁹ *Foster v. Mansfield etc. R. R. Co.*, 146 U. S. 101, 13 S. Ct. 28, 36 L. ed. 899.

⁴⁰ *Luther v. Borden*, 7 How. 1, 12 L. ed. 581; *United States v. Ferreira*, 13 How. 40, 14 L. ed. 42.

⁴¹ *Craig v. Missouri*, 4 Pet. 438, 7 L. ed. 903; *Cherokee Nation v. Georgia*, 5 Pet. 20, 8 L. ed. 25; *United States v. Blaine*, 139 U. S. 326, 11 S. Ct. 607, 35 L. ed. 183; *In re Cooper*, 143 U. S. 503, 12 S. Ct. 453, 36 L. ed. 232.

controversy is political—e. g., where it involves a question purely governmental—the courts cannot take cognizance of it.⁴²

Cases at law, under the constitution, are those suits in which legal rights are ascertained and determined, in contradistinction to those where equitable rights alone are recognized and equitable rights administered.⁴³ Equity cases are those suits in which relief is sought according to the principles and practice of the equity jurisdiction as established in English jurisprudence.⁴⁴ A case can be considered only when the subject matter is submitted in the form prescribed by law,⁴⁵ and the record must show, not only that some law or treaty or right under the constitution is drawn into question,⁴⁶ but that such law or treaty or constitutional right is substantially involved.⁴⁷ The validity of a statute is not drawn into question every time rights claimed under that statute are controverted, nor is the validity of an authority drawn into question every time an act done under such authority is disputed,⁴⁸ and a suit to enforce a right or title taking its origin from United States laws, is not necessarily such as federal courts may entertain regardless

⁴² *Georgia v. Stanton*, 6 Wall. 71-76, 18 L. ed. 721; *In re Cooper*, 143 U. S. 503, 12 S. Ct. 453, 36 L. ed. 232.

⁴³ *Parsons v. Bedford*, 3 Pet. 447, 7 L. ed. 732; *Fenn v. Holme*, 21 How. 486, 16 L. ed. 198; *Irvine v. Marshall*, 20 How. 565, 15 L. ed. 994. See, also, *Strother v. Lucas*, 6 Pet. 768, 8 L. ed. 573; *Parish v. Ellis*, 16 Pet. 453, 10 L. ed. 1028; *Bennett v. Butterworth*, 11 How. 669, 13 L. ed. 859; *Sherbourne v. De Cordova*, 24 How. 423, 16 L. ed. 741.

⁴⁴ *Irvine v. Marshall*, 20 How. 565, 15 L. ed. 994; *National Surety Co. v. State Bank*, 120 Fed. 593, 61 L. R. A. 394.

⁴⁵ *Robinson v. Campbell*, 3 Wheat. 212, 4 L. ed. 372; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Parsons v. Bedford*, 3 Pet. 433, 7 L. ed. 732.

⁴⁶ *Lawler v. Walker*, 14 How. 149, 14 L. ed. 364; *Mills v. Brown*, 16 Pet. 525, 10 L. ed. 1055; *Railroad Co. v. Bock*, 4 Wall. 180, 18 L. ed. 381; *Ryan v. Thomas*, 4 Wall. 603, 18 L. ed. 460; *La Abra etc. Mining Co. v. United States*, 175 U. S. 455, 20 S. Ct. 168, 44 L. ed. 223.

⁴⁷ *Gableman v. Peoria etc. R. R. Co.*, 179 U. S. 339, 21 S. Ct. 171, 45 L. ed. 220.

⁴⁸ *Ferry v. King Co.*, 141 U. S. 673, 12 S. Ct. 128, 35 L. ed. 895.

of citizenship.⁴⁹ The pleadings need not, however, point out what particular clause in the constitution is in question.⁵⁰

The courts of the United States have no jurisdiction of offenses at common law.⁵¹ Suits in which relief is sought according to the principles and practice of equity jurisdiction are "cases in equity,"⁵² and the equity jurisdiction is the same as that of the high court of chancery in England.⁵³ The true test is whether there is a plain, adequate and complete remedy at law in the same court.⁵⁴

The judicial power extends to cases in state courts and to statutes, whether passed by state legislatures or by Congress, which are claimed to be repugnant to the constitution of the United States,⁵⁵ but not to statutes claimed to be void under

⁴⁹ *Shoshone Mining Co. v. Butter*, 177 U. S. 507, 20 S. Ct. 726, 44 L. ed. 864.

⁵⁰ *Chrystal Springs etc. Water Co. v. City of Los Angeles*, 76 Fed. 148.

⁵¹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *Turner v. Bank of North America*, 4 Dall. 10, 1 L. ed. 718; *United States v. Wiltberger*, 5 Wheat. 104, 5 L. ed. 37; *Jones v. United States*, 137 U. S. 211, 11 S. Ct. 80 34 L. ed. 691; *Manchester v. Massachusetts*, 139 U. S. 262, 11 S. Ct. 559, 35 L. ed. 159; *United States v. Lancaster*, 2 McLean, 431, Fed. Cas. No. 15,556; *Kitchen v. Strawbridge*; 4 Wash. C. C. 84, Fed. Cas. No. 7854.

⁵² *Robinson v. Campbell*, 3 Wheat. 212, 4 L. ed. 372; *United States v. Howland*, 4 Wheat. 108, 4 L. ed. 526; *Lorman v. Clarke*, 2 McLean, 568, Fed. Cas. No. 8516; *Gordon v. Hobart*, 2 Sum. 401, Fed. Cas. No. 5609; *Peatt v. Northam*, 5 Mason, 95, Fed. Cas. No. 11,376; *Cropper v. Coburn*, 2 Curt. 465, Fed. Cas. No. 3416.

⁵³ *Sheffield Furnace Co. v. Witherow*, 149 U. S. 574, 13 S. Ct. 936, 37 L. ed. 853; *Mississippi Mills v. Cohn*, 150 U. S. 202, 37 L. ed. 1052.

⁵⁴ *United States v. Howland*, 4 Wheat. 108, 4 L. ed. 526; *Boyce v. Grundy*, 3 Pet. 215, 7 L. ed. 655; *Gaines v. Chew*, 2 How. 619, 11 L. ed. 619; *Williams v. Benedict*, 8 How. 107, 12 L. ed. 1007; *National Surety Co. v. State Bank*, 120 Fed. 593, 61 L. R. A. 394.

⁵⁵ *Calder v. Bull*, 3 Dall. 399, 1 L. ed. 648; *Marbury v. Madison*, 1 Cr. 137, 2 L. ed. 60; *Trustees Dartmouth College v. Woodward*, 4 Wheat. 625, 4 L. ed. 629; *Parsons v. District of Columbia*, 170 U. S. 45, 18 S. Ct. 521, 42 L. ed. 943; *Chrystal Springs etc. Water Co. v. City of Los Angeles*, 76 Fed. 148.

a state constitution only.⁵⁶ The judiciary can only inquire whether the means devised by Congress in the exercise of a power granted are repugnant to the constitution,⁵⁷ not whether Congress acted wisely,⁵⁸ or with a proper motive.⁵⁹ And to warrant the judiciary in declaring an act of Congress void it must be clearly repugnant to the constitution;⁶⁰ the objection must not be doubtful,⁶¹ but must show a clear violation of the constitution.⁶²

The judicial power extends to all cases affecting ambassadors and consuls, notwithstanding they are not parties to the record.⁶³ The jurisdiction of circuit courts over a controversy between a citizen and an alien is not defeated because the alien is the consul of a foreign government,⁶⁴ and citizens of the

⁵⁶ *Calder v. Bull*, 3 Dall. 392, 1 L. ed. 648; *State v. Hufty*, 11 La. Ann. 316; *Williams v. Bank of Michigan*, 7 Wend. 553.

⁵⁷ *Interstate Commerce Com. v. Brimson*, 154 U. S. 447, 14 S. Ct. 1125, 38 L. ed. 1047.

⁵⁸ *Marbury v. Madison*, 1 Cr. 176, 2 L. ed. 60; *Dred Scott v. Sanford*, 19 How. 405, 15 L. ed. 691; *United States v. Union Pacific R. R. Co.*, 91 U. S. 91, 23 L. ed. 224; *Brass v. North Dakota*, 153 U. S. 403, 14 S. Ct. 857, 38 L. ed. 757; *Li Sing v. United States*, 180 U. S. 495, 21 S. Ct. 449, 45 L. ed. 634; *Treat v. White*, 181 U. S. 269, 21 S. Ct. 611, 45 L. ed. 853.

⁵⁹ *Fletcher v. Peck*, 6 Cr. 131, 3 L. ed. 162; *Ex parte McCordle*, 7 Wall. 514, 19 L. ed. 264; *Soon Hing v. Crowley*, 113 U. S. 710, 5 S. Ct. 730, 28 L. ed. 1145; *United States v. Des Moines etc. R. R. Co.*, 142 U. S. 544, 12 S. Ct. 308, 35 L. ed. 1099.

⁶⁰ *Hylton v. United States*, 3 Dall. 175, 1 L. ed. 556; *Calder v. Bull*, 3 Dall. 395, 1 L. ed. 648; *Munn v. Illinois*, 94 U. S. 123, 24 L. ed. 77; *Livingston v. Darlington*, 101 U. S. 410, 25 L. ed. 1015; *Hooper v. California*, 155 U. S. 657, 15 S. Ct. 207, 39 L. ed. 297.

⁶¹ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 625, 4 L. ed. 629; *Parsons v. Bedford*, 3 Pet. 448, 7 L. ed. 732; *Fairbank v. United States*, 181 U. S. 285, 21 S. Ct. 648, 45 L. ed. 862; *Chesapeake etc. Tel. Co. v. Manning*, 186 U. S. 245, 22 S. Ct. 881, 46 L. ed. 1144.

⁶² *Chesapeake etc. Ry. Co. v. Kentucky*, 179 U. S. 394, 21 S. Ct. 101, 45 L. ed. 244; *Fairbank v. United States*, 181 U. S. 285, 21 S. Ct. 648, 45 L. ed. 862.

⁶³ *Osborne v. Bank of United States*, 9 Wheat. 738, 6 L. ed. 204; *United States v. Ortega*, 11 Wheat. 467, 6 L. ed. 521; *United States v. Ravara*, 2 Dall. 297, Fed. Cas. No. 16,112.

⁶⁴ *Bors v. Preston*, 111 U. S. 261, 4 S. Ct. 407, 28 L. ed. 419.

United States, although consuls of foreign nations, may be sued in the district court, where they are not received as diplomatic agents, though they may be acting for the minister in his absence.⁶⁵ The constitutional grant of original jurisdiction to the supreme court of cases affecting ambassadors and consuls is not exclusive, and subordinate federal courts may be invested with jurisdiction in such cases.⁶⁶

— Jurisdiction Dependent upon Parties.

The federal courts have exclusive jurisdiction of all cases in which the United States is a party,⁶⁷ and under the act of 1888 this jurisdiction attaches when the government is a plaintiff without regard to the value of the matter in dispute;⁶⁸ e. g., to a suit brought by the United States as guardian of Indians who have never become citizens.⁶⁹ But while the judicial power extends to controversies to which the government is a party,⁷⁰ yet where the United States is merely a nominal party the same rules will apply in determining jurisdiction as if the suit were between private individuals appearing as parties to the record.⁷¹ So, where an act of Congress requires that contractors shall give bonds for the benefit of materialmen and laborers, who are authorized to sue thereon in the name of the United States, such a suit is not one brought by the United States so as to give the federal courts jurisdiction regardless of the subject matter and the citizenship of the real parties in interest.⁷² Whether a suit is one against the United States is to be determined by the result of the decree that may be rendered.⁷³

⁶⁵ *In re Baiz*, 135 U. S. 425, 10 S. Ct. 854, 34 L. ed. 222.

⁶⁶ *Bors v. Preston*, 111 U. S. 256, 4 S. Ct. 407, 28 L. ed. 419.

⁶⁷ *The Moses Taylor*, 4 Wall. 430, 18 L. ed. 397.

⁶⁸ *United States v. Sayward*, 160 U. S. 498, 16 S. Ct. 371, 40 L. ed. 508; *United States v. Winans*, 73 Fed. 75; *United States v. Reid*, 90 Fed. 522.

⁶⁹ *United States v. Boyd*, 68 Fed. 577.

⁷⁰ *Mississippi v. Johnson*, 4 Wall. 501, 18 L. ed. 437.

⁷¹ *United States v. Beebe*, 127 U. S. 347, 8 S. Ct. 1083, 32 L. ed. 121; *Curtner v. United States*, 140 U. S. 673, 13 S. Ct. 985, 37 L. ed. 890.

⁷² *United States v. Sheridan*, 119 Fed. 236.

⁷³ *Minnesota v. Hitchcock*, 135 U. S. 386, 22 S. Ct. 650, 46 L. ed. 854.

An action of trespass to try title against officers of the United States in possession of land is an action against the United States and its land and not merely against its officers,⁷⁴ as also is a suit by a state against the Secretary of the Interior to enjoin the sale of lands claimed by the state and which the United States agreed to protect for Indians.⁷⁵ But a bill by a state against the President to enjoin the execution of the reconstruction laws is not a suit against the United States.⁷⁶

This clause extends the judicial power to suits wherein a state is a party.⁷⁷ By the constitution as originally adopted a state was suable in the supreme court by an individual citizen of another state,⁷⁸ and it was this ruling that led to the adoption of the Eleventh Amendment prohibiting suits in the federal courts against a state by the citizens of another state or by aliens.⁷⁹ Jurisdiction of the federal courts attaches only when a state is a party to the record,⁸⁰ and the governor or chief executive and the attorney general are served with pro-

⁷⁴ *Stanley v. Schwalby*, 162 U. S. 272, 16 S. Ct. 754, 40 L. ed. 960.

⁷⁵ *Minnesota v. Hitchcock*, 185 U. S. 384, 22 S. Ct. 650, 46 L. ed. 854.

⁷⁶ *Mississippi v. Johnson*, 4 Wall. 498, 18 L. ed. 437; *Georgia v. Stanton*, 6 Wall. 50, 18 L. ed. 721.

⁷⁷ *New York v. Connecticut*, 4 Dall. 1, 1 L. ed. 715; *Governor v. Madrazo*, 1 Pet. 122, 7 L. ed. 73; *New Jersey v. New York*, 5 Pet. 290, 8 L. ed. 127; *Georgia v. Brailsford*, 2 Dall. 402, 1 L. ed. 433; *Chisholm v. Georgia*, 2 Dall. 450, 1 L. ed. 440; *Grayson v. Virginia*, 3 Dall. 320, 1 L. ed. 619; *Rhode Island v. Massachusetts*, 12 Pet. 760, 9 L. ed. 1233; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 288, 8 S. Ct. 1373, 32 L. ed. 239.

⁷⁸ *Chisholm v. Georgia*, 2 Dall. 450-480, 1 L. ed. 440.

⁷⁹ *Governor v. Madrazo*, 1 Pet. 122, 7 L. ed. 73; *Briscoe v. Bank of Kentucky*, 11 Pet. 321, 9 L. ed. 709; *United States v. Lee*, 106 U. S. 207, 1 S. Ct. 249, 27 L. ed. 171; *New Hampshire v. Louisiana*, 108 U. S. 86, 2 S. Ct. 180, 27 L. ed. 656; *Buckner v. Street*, 1 Dill. 259, Fed. Cas. No. 2098; *Thebo v. Choctaw Tribe*, 66 Fed. 375; *Smith v. Kaeliffe*, 87 Fed. 968.

⁸⁰ *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *New York v. Connecticut*, 4 Dall. 3, 1 L. ed. 715; *Fowler v. Lindsay*, 3 Dall. 411, 1 L. ed. 658; *United States v. Peters*, 5 Cr. 115, 3 L. ed. 53.

cess;⁸¹ or when an officer is sued in his official capacity.⁸² But a suit against an officer is not a suit against the state unless it is against him solely in his representative capacity.⁸³ A suit against the attorney general and assistant attorney general of a state to enjoin a prosecution in the name of a state under a state law is a suit against the state.⁸⁴

The power extends to controversies between two or more states,⁸⁵ including suits to settle disputed boundaries;⁸⁶ but a suit by a state on claims assigned to it, against another state, is not a suit between states within the meaning of this clause.⁸⁷ The "controversies" contemplated by this clause are suits of a civil nature only.⁸⁸ The grant of judicial power was not intended to confer jurisdiction of a suit by one state, of such a nature that it could not, on settled principles of public and international law, be entertained by the judiciary of the other state at all.⁸⁹ This provision applies only to states that are

⁸¹ *Georgia v. Brailsford*, 2 Dall. 402, 1 L. ed. 433; *Oswald v. New York*, 2 Dall. 415, 1 L. ed. 438; *Grayson v. Virginia*, 3 Dall. 320, 1 L. ed. 619; *New Jersey v. New York*, 3 Pet. 464, 7 L. ed. 741; *New Jersey v. New York*, 5 Pet. 289, 8 L. ed. 127; *Poydras De La Land v. Treasurer of Louisiana*, 17 How. 2, 15 L. ed. 93; *Kentucky v. Denison*, 24 How. 97.

⁸² *Kentucky v. Ohio*, 24 How. 97, 16 L. ed. 717; *Governor of Georgia v. Madrazo*, 1 Pet. 110, 7 L. ed. 73; *In re Ayers*, 123 U. S. 506, 8 S. Ct. 164, 31 L. ed. 216; *Pennoyer v. McConaughy*, 140 U. S. 9, 11 S. Ct. 699, 35 L. ed. 363.

⁸³ *Bolston v. Missouri Fund Commissioners*, 120 U. S. 411, 7 S. Ct. 599, 30 L. ed. 721; *Illinois etc. R. R. Co. v. Adams*, 180 U. S. 37, 21 S. Ct. 251, 45 L. ed. 410.

⁸⁴ *Union Trust Co. v. Stearns*, 119 Fed. 740.

⁸⁵ *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Dundas v. Bowler*, 3 McLean, 204, Fed. Cas. No. 4140.

⁸⁶ *Rhode Island v. Massachusetts*, 12 Pet. 657, 9 L. ed. 1233; *Alabama v. Georgia*, 23 How. 510, 16 L. ed. 556; *Brainerd v. Williams*, 1 McLean, 122, Fed. Cas. No. 1804.

⁸⁷ *New Hampshire v. Louisiana*, 108 U. S. 91, 2 S. Ct. 176, 27 L. ed. 656.

⁸⁸ *Chisholm v. Georgia*, 2 Dall. 431, 1 L. ed. 440; *In re Pacific Railway Commission*, 12 Saw. 559, 32 Fed. 255.

⁸⁹ *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 289, 8 S. Ct. 370, 32 L. ed. 239.

members of the Union, and to public bodies owing obedience and conformity to its constitution and laws.⁹⁰ To constitute a state a political organization it must be a state in the contemplation of the constitution, and that term does not embrace Indian nations.⁹¹ So a territory cannot be deemed a state within the meaning of the constitution.⁹² The power extends to controversies between a state and citizens of other states, but this does not include a suit by the citizens against the state.⁹³ Nor does it include a suit in which some of the defendants are citizens of the complainant state.⁹⁴

This clause gives to the federal courts jurisdiction over controversies between citizens of different states.⁹⁵ The object of the grant of power in this respect was to secure for the trial of controversies between citizens of different states a more impartial tribunal than the courts of the state where one litigant resided would be.⁹⁶ It is the situation of the parties, and not their character, that determines the jurisdiction of the federal courts.⁹⁷ The test of jurisdiction is diversity of citizenship,⁹⁸ and it is indispensable that all the parties have jurisdictional capacity; each plaintiff must be capable of suing each defendant in the federal court;⁹⁹ accordingly if a necessary party de-

⁹⁰ *Scott v. Jones*, 5 How. 378, 12 L. 181.

⁹¹ *Cherokee Nation v. Georgia*, 5 Pet. 18, 8 L. ed. 25; *McElvain v. Mudd*, 44 Ala. 65; *Shorter v. Cobb*, 39 Ga. 299.

⁹² *Smith v. United States*, 1 Wash. Ter. 269.

⁹³ *Cohen v. Virginia*, 6 Wheat. 406, 5 L. ed. 257. See Eleventh Amendment.

⁹⁴ *Minnesota v. Northern Securities Co.*, 184 U. S. 199, 22 S. Ct. 308, 46 L. ed. 499.

⁹⁵ *Brown v. Keene*, 8 Pet. 115, 8 L. ed. 885; *McMicken v. Webb*, 11 Pet. 38, 9 L. ed. 618; *Ohio v. Wheeler*, 1 Black, 297, 17 L. ed. 130; *Board of Commissioners v. Aspinwall*, 24 How. 384, 16 L. ed. 735.

⁹⁶ *Barrow Steamship Co. v. Kane*, 170 U. S. 111, 18 S. Ct. 526, 42 L. ed. 964.

⁹⁷ *Connolly v. Taylor*, 2 Pet. 556, 7 L. ed. 518.

⁹⁸ *Wickliffe v. Eve*, 17 How. 470, 15 L. ed. 163; *Mail Co. v. Flanders*, 12 Wall. 135, 20 L. ed. 249; *Anderson v. Watt*, 138 U. S. 706, 11 S. Ct. 449, 34 L. ed. 1078.

⁹⁹ *Strawbridge v. Curtiss*, 3 Cr. 267, 2 L. ed. 435; *New Orleans v. Winter*, 1 Wheat. 95, 4 L. ed. 44; *Coal Co. v. Blatchford*, 11 Wall.

defendant is a citizen of the same state with the plaintiff, the federal courts have no jurisdiction.¹⁰⁰ The mere allegation of diverse citizenship by plaintiffs electing to assert a joint claim cannot create jurisdiction.¹⁰¹ For the purposes of jurisdiction a party is not necessarily a citizen of the state of which he is a resident.¹⁰² An averment that one is a "resident" of a state is not sufficient; it must affirmatively appear that he is a "citizen."¹⁰³ So, also, as to an averment that a party is "of" a particular state.¹⁰⁴ Nor is it sufficient to allege that the defendant is a citizen of a particular state and that none of the plaintiffs are citizens of that state; it must be alleged that they are citizens of another named state or aliens.¹⁰⁵ But a party is sufficiently described as a citizen where he alleges that his rights as such have been infringed and avers that he is a "resident," and the sufficiency of the allegation is not questioned below.¹⁰⁶

174, 20 L. ed. 179; *Case of Sewing-Machine Companies*, 18 Wall. 575, 21 L. ed. 914.

¹⁰⁰ *Smith v. Lyon*, 133 U. S. 316, 10 S. Ct. 303, 33 L. ed. 635; *Massachusetts etc. Co. v. Cane Creek*, 155 U. S. 285, 15 S. Ct. 91, 39 L. ed. 152; *Hoe v. Jamieson*, 166 U. S. 397, 17 S. Ct. 596, 41 L. ed. 1049.

¹⁰¹ *Florida etc. R. R. Co. v. Bell*, 176 U. S. 334, 20 S. Ct. 399, 44 L. ed. 486; *Wheless v. St. Louis*, 180 U. S. 382, 21 S. Ct. 402, 45 L. ed. 583.

¹⁰² *Brown v. Keene*, 8 Pet. 115, 8 L. ed. 885; *Shelton v. Tiffin*, 6 How. 184, 12 L. ed. 387; *Edwards v. Tanneret*, 12 Wall. 450, 20 L. ed. 415; *Timmons v. Elyton Land Co.*, 139 U. S. 379, 11 S. Ct. 585, 35 L. ed. 195; *Southern Pacific Co. v. Denton*, 146 U. S. 205, 13 S. Ct. 44, 36 L. ed. 942; *Cooper v. Newell*, 155 U. S. 533, 15 S. Ct. 355, 39 L. ed. 249.

¹⁰³ *Wood v. Wagnon*, 2 Cr. 9, 2 L. ed. 191; *Robertson v. Cease*, 97 U. S. 648, 24 L. ed. 1057; *Menard v. Goggan*, 121 U. S. 253, 7 S. Ct. 873, 30 L. ed. 614; *Denny v. Pironi*, 141 U. S. 123, 11 S. Ct. 966, 35 L. ed. 657; *Wolfe v. Hartford Life etc. Ins. Co.*, 148 U. S. 389, 13 S. Ct. 602, 37 L. ed. 493.

¹⁰⁴ *Wood v. Wagnon*, 2 Cr. 9, 2 L. ed. 191; *Jackson v. Ashton*, 8 Pet. 149, 8 L. ed. 898.

¹⁰⁵ *Cameron v. Hodges*, 127 U. S. 324, 8 S. Ct. 1154, 32 L. ed. 132.

¹⁰⁶ *Sully v. American National Bank*, 178 U. S. 298, 20 S. Ct. 935, 44 L. ed. 1072.

A corporation is a citizen for the purpose of suit in the federal courts;¹⁰⁷ but it must be organized as such.¹⁰⁸ A limited partnership is not within the rule notwithstanding its capacity to sue and be sued in its association name.¹⁰⁹ Under this clause a corporation will be deemed to be a citizen of the state where it was created,¹¹⁰ regardless of the actual citizenship of its members,¹¹¹ which for purposes of jurisdiction over the corporation is conclusively presumed to be in the state of incorporation.¹¹² The adoption of a foreign corporation by a state does not make the corporation a citizen of that state within this clause, but it remains a citizen of the state of its creation.¹¹³ A corporation organized in two different states cannot be joined in a suit as one and the same plaintiff, nor sue in the federal court a citizen of either of the states in which it was organized,¹¹⁴ and a corporation chartered by two or more states is not, if sued in one of those states, a citizen of any other state;¹¹⁵ but a railway company merely operating in sev-

107 *Case of Sewing-Machine Companies*, 18 Wall. 575, 21 L. ed. 914; *Chapman v. Barney*, 129 U. S. 682, 9 S. Ct. 426, 32 L. ed. 800.

108 *Chapman v. Barney*, 129 U. S. 682, 9 S. Ct. 426, 32 L. ed. 800.

109 *Great Southern etc. Hotel Co. v. Jones*, 177 U. S. 455, 20 S. Ct. 690, 44 L. ed. 842.

110 *Hope Ins. Co. v. Boardman*, 5 Cr. 57, 3 L. ed. 36; *Marshall v. Baltimore etc. R. R. Co.*, 16 How. 314, 14 L. ed. 953; *Railroad Co. v. Koontz*, 104 U. S. 12, 26 L. ed. 643; *Nashua etc. R. R. Co. v. Lowell etc. R. R. Co.*, 136 U. S. 370, 10 S. Ct. 1004, 34 L. ed. 363; *St. Louis etc. Ry. Co. v. James*, 161 U. S. 555, 16 S. Ct. 621, 40 L. ed. 802; *Westheider v. Wabash R. R. Co.*, 115 Fed. 840.

111 *Louisville etc. R. R. Co. v. Letson*, 2 How. 555, 11 L. ed. 353.

112 *Muller v. Dows*, 94 U. S. 445, 24 L. ed. 207; *Shaw v. Quincy Mining Co.*, 145 U. S. 451, 12 S. Ct. 935, 36 L. ed. 768; *Barrow Steamship Co. v. Kane*, 170 U. S. 106, 18 S. Ct. 526, 42 L. ed. 964.

113 *Railway Co. v. Whitton*, 13 Wall. 285, 20 L. ed. 571; *Pennsylvania Co. v. St. Louis etc. R. R. Co.*, 118 U. S. 297, 6 S. Ct. 1094, 30 L. ed. 83; *St. Louis etc. Ry. Co. v. James*, 161 U. S. 566, 16 S. Ct. 621, 40 L. ed. 802; *Southern Ry. Co. v. Allison*, 190 U. S. 326, 23 S. Ct. 713, 47 L. ed. 1079.

114 *Ohio etc. R. R. Co. v. Wheeler*, 1 Black, 297, 17 L. ed. 130.

115 *Railway Co. v. Whitton*, 13 Wall. 283, 20 L. ed. 571.

eral states under authority granted by each cannot be deemed a citizen of each.¹¹⁶

Representatives and persons occupying fiduciary capacities generally stand on their own citizenship in determining the jurisdiction of the federal courts.¹¹⁷ So the citizenship of a beneficiary in a trust deed is immaterial in a suit by the trustee to foreclose.¹¹⁸ A guardian, and not his ward, is the party plaintiff so far as jurisdiction is concerned, where he has authority to sue in his own name,¹¹⁹ and the citizenship of an administrator is material in an action for killing his intestate.¹²⁰

The courts will always have regard to the real, rather than to the nominal, party to a suit, in order to determine their jurisdiction.¹²¹ So the federal courts have no jurisdiction of a suit on a right of action fictitiously assigned,¹²² and a corporation collusively organized by the members of a corporation of another state for the purpose of suing in a federal court cannot bring such suit.¹²³ Where, however, a transfer of interest is real and for a consideration, the mere fact that it was made to give jurisdiction is immaterial.¹²⁴ The jurisdiction of the

¹¹⁶ *St. Joseph etc. R. R. Co. v. Steele*, 167 U. S. 663, 17 S. Ct. 925, 42 L. ed. 315.

¹¹⁷ *New Orleans v. Gaines*, 138 U. S. 606, 11 S. Ct. 428, 34 L. ed. 1102; *Chappedelaine v. Dechenaux*, 4 Cr. 308, 2 L. ed. 629; *Childress v. Emory*, 8 Wheat. 660, 5 L. ed. 705; *Rice v. Houston*, 13 Wall. 67, 20 L. ed. 484; *Continental Ins. Co. v. Rhoads*, 119 U. S. 240, 7 S. Ct. 193, 30 L. ed. 380.

¹¹⁸ *Dodge v. Tulleys*, 144 U. S. 455, 12 S. Ct. 728, 36 L. ed. 501; *Plant Investment Co. v. Jacksonville etc. Ry. Co.*, 152 U. S. 77, 14 S. Ct. 483, 38 L. ed. 358.

¹¹⁹ *Mexican Central Ry. Co. v. Eckman*, 187 U. S. 429, 23 S. Ct. 211, 47 L. ed. 245.

¹²⁰ *Bishop v. Boston etc. R. R. Co.*, 117 Fed. 771.

¹²¹ *Blocklock v. Small*, 127 U. S. 104, 8 S. Ct. 1096, 32 L. ed. 70; *Stewart v. Baltimore etc. R. R. Co.*, 168 U. S. 449, 18 S. Ct. 105, 42 L. ed. 537.

¹²² *Barney v. Baltimore City*, 6 Wall. 288, 18 L. ed. 825; *Crawford v. Neal*, 144 U. S. 593, 12 S. Ct. 759, 36 L. ed. 552.

¹²³ *Lehigh Min. etc. Co. v. Kelly*, 64 Fed. 401.

¹²⁴ *Crawford v. Neal*, 144 U. S. 593, 12 S. Ct. 759, 36 L. ed. 552; *Lehigh Min. Co. v. Kelly*, 160 U. S. 336, 16 S. Ct. 307, 40 L. ed. 444;

federal courts over assigned causes of action will be denied unless the record affirmatively shows the assignor's capacity to sue.¹²⁵

This clause does not embrace cases where one of the parties is a citizen of a territory or of the District of Columbia.¹²⁶

Controversies between citizens claiming lands under grants from different states are within the jurisdiction of the federal courts, notwithstanding one of the states at the time of the first grant was a part of the other;¹²⁷ it is the grant which passes the legal title and fixes the jurisdiction.¹²⁸

This clause gives the federal courts jurisdiction where foreign states or individual foreigners are parties;¹²⁹ but it does not authorize cognizance of suits between aliens,¹³⁰ and a citizen must be the adverse party.¹³¹ The jurisdiction extends to a suit between citizens of the same state where the plaintiff is merely nominal and suing for an alien.¹³² One who is an alien at the time a suit is commenced may sue in the federal courts.¹³³ The diversity of citizenship must, as in other cases, appear

Dickerman v. Northern Trust Co., 176 U. S. 192, 20 S. Ct. 311, 44 L. ed. 423.

¹²⁵ *Metcalf v. Watertown*, 128 U. S. 587, 9 S. Ct. 173, 32 L. ed. 543; *Parker v. Ormsby*, 141 U. S. 86, 11 S. Ct. 912, 35 L. ed. 654; *Benjamin v. New Orleans*, 169 U. S. 164, 18 S. Ct. 298, 42 L. ed. 700.

¹²⁶ *Hepburn v. Ellzey*, 2 Cr. 453, 2 L. ed. 332; *New Orleans v. Winter*, 1 Wheat. 94, 4 L. ed. 44; *Barney v. Baltimore City*, 6 Wall. 287, 18 L. ed. 825; *Cameron v. Hodges*, 127 U. S. 325, 8 S. Ct. 1154, 32 L. ed. 132; *Hooe v. Jamieson*, 166 U. S. 397, 17 S. Ct. 596, 41 L. ed. 1049.

¹²⁷ *Town of Pawlet v. Clark*, 9 Cr. 292, 3 L. ed. 735.

¹²⁸ *Colson v. Lewis*, 2 Wheat. 377, 4 L. ed. 266.

¹²⁹ *Chappedelaine v. Dechenaux*, 4 Cr. 308, 2 L. ed. 629; *Brown v. Strobe*, 5 Cr. 303, 3 L. ed. 108; *Cook v. Lillo*, 103 U. S. 793, 26 L. ed. 460.

¹³⁰ *Mossman v. Higginson*, 4 Dall. 14, 1 L. ed. 720; *Montalet v. Murray*, 4 Cr. 47, 2 L. ed. 545.

¹³¹ *Jackson v. Twentyman*, 2 Pet. 136, 7 L. ed. 374; *Gassies v. Ballou*, 6 Pet. 761, 8 L. ed. 573; *Brown v. Keen*, 8 Pet. 112, 8 L. ed. 885; *Picquet v. Swan*, 4 Mason, 443, Fed. Cas. No. 11,133; *Case v. Clark*, 5 Mason, 70, Fed. Cas. No. 2490.

¹³² *Brown v. Strobe*, 5 Cr. 303, 3 L. ed. 108.

¹³³ *Cook v. Lillo*, 103 U. S. 793, 26 L. ed. 460.

from the record,¹³⁴ and although one party be described as an alien, the other must be expressly stated to be a citizen of a particular state.¹³⁵ An averment that a plaintiff is "a citizen of London, England," is insufficient.¹³⁶ At common law an alien cannot maintain a real action,¹³⁷ but the disability is purely personal.¹³⁸ A court may have jurisdiction as to parties and subject matter, yet if it makes a decree which is not within the powers granted to it, such decree is void,¹³⁹ and a circuit court may entertain a suit between two aliens to impeach a decree in a former suit in the same circuit.¹⁴⁰ The Chinese Exclusion Acts do not deprive a Chinaman of the right to have the federal courts determine his right to land.¹⁴¹ An Indian tribe is not a foreign nation within this clause.¹⁴² A foreign corporation is an alien for the purposes of suit in the federal courts.¹⁴³

Admiralty and Maritime Jurisdiction.

Jurisdiction is conferred on the federal courts in admiralty because, as the seas are the joint property of the nations, the jurisdiction is essentially national,¹⁴⁴ and an additional reason

¹³⁴ *Jackson v. Twentyman*, 2 Pet. 136, 7 L. ed. 374; *Baird v. Byrne*, 3 Wall. Jr. 1, Fed. Cas. No. 757; *Bors v. Preston*, 111 U. S. 263, 4 S. Ct. 407, 28 L. ed. 419.

¹³⁵ *Hodgson v. Bowerbank*, 5 Cr. 304, 3 L. ed. 308.

¹³⁶ *Stuart v. Easton*, 156 U. S. 47, 15 S. Ct. 268, 39 L. ed. 341.

¹³⁷ *Jones v. McMasters*, 20 How. 20, 15 L. ed. 805; *Lanfear v. Henley*, 4 Wall. 209, 18 L. ed. 325; *McDonough v. Millandon*, 3 How. 693, 11 L. ed. 787; *Sample v. Hager*, 4 Wall. 433, 18 L. ed. 402.

¹³⁸ *Kemp v. Kennedy*, 5 Cr. 173, 3 L. ed. 70, Pet. C. C. 40.

¹³⁹ *United States v. Walker*, 109 U. S. 258, 3 S. Ct. 277, 27 L. ed. 927.

¹⁴⁰ *Lacassagne v. Chapins*, 144 U. S. 126, 12 S. Ct. 659, 36 L. ed. 368.

¹⁴¹ *United States v. Jung Ah Lung*, 124 U. S. 627, 8 S. Ct. 663, 31 L. ed. 591.

¹⁴² *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. ed. 25; *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483.

¹⁴³ *Society for Propagation of Gospel v. New Haven*, 8 Wheat. 464, 5 L. ed. 662; *Commercial etc. Bank v. Slocomb*, 14 Pet. 60, 10 L. ed. 354.

¹⁴⁴ *Chisholm v. Georgia*, 2 Dall. 475, 1 L. ed. 440.

is to be found in the fact that because of their nature such cases are closely connected with the grant of the commerce power.¹⁴⁵ The jurisdiction is not restricted to admiralty, but includes all "maritime" jurisdiction.¹⁴⁶ The constitutional provision for federal jurisdiction referred to a system of law operating uniformly in the whole country,¹⁴⁷ and regard must be had to our legal history, constitution, legislation, customs and adjudications.¹⁴⁸ The admiralty jurisdiction was not intended to be as limited as it was in England, at the time of the adoption of the constitution,¹⁴⁹ and it was to guard against a narrow construction of the word "admiralty" that "maritime" was added.¹⁵⁰

The maritime law is a part of the common law,¹⁵¹ but the term belongs to the law of nations, as well as to domestic and municipal law,¹⁵² and partaking, as it does, of an international character, the courts will frequently resort to continental col-

¹⁴⁵ *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 392, 12 L. ed. 465.

¹⁴⁶ *De Lovio v. Boit*, 2 Gall. 398, Fed. Cas. No. 3776; *The Seneca*, Gilp. 28, Fed. Cas. No. 3650; *The Huntress*, 2 Ware (Dav.), 82, Fed. Cas. No. 6914; *Kynoch v. The S. C. Ives*, Newb. 205, Fed. Cas. No. 7958.

¹⁴⁷ *The Lottawanna*, 21 Wall. 575, 22 L. ed. 654; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344, 12 L. ed. 465; *Waring v. Clarke*, 5 How. 441, 12 L. ed. 226; *The Genessee Chief v. Fitzhugh*, 12 How. 443, 13 L. ed. 1058.

¹⁴⁸ *The St. Lawrence*, 1 Black, 522, 17 L. ed. 180; *The Lottawanna*, 21 Wall. 576, 22 L. ed. 654.

¹⁴⁹ *Waring v. Clarke*, 5 How. 441, 12 L. ed. 226; *De Lovio v. Boit*, 2 Gall. 398, Fed. Cas. No. 3776; *The Genessee Chief v. Fitzhugh*, 12 How. 458, 13 L. ed. 1058; *The Glide*, 167 U. S. 614, 17 S. Ct. 933, 42 L. ed. 296; *Ex parte Easton*, 95 U. S. 72, 24 L. ed. 373; *The Louisville Underwriters*, 134 U. S. 493, 10 S. Ct. 589, 33 L. ed. 991; *The Congress*, 1 Biss. 44, Fed. Cas. No. 3099; *Gloucester Ins. Co. v. Younger*, 2 Curt. 333, Fed. Cas. No. 5487.

¹⁵⁰ *Fretz v. Bull*, 12 How. 466, 13 L. ed. 1068; *The Hine v. Trevor*, 4 Wall. 555, 18 L. ed. 451; *The Moses Taylor*, 4 Wall. 411, 18 L. ed. 397.

¹⁵¹ *Thompson v. The Catharina*, 1 Pet. Adm. 104, Fed. Cas. No. 13,949.

¹⁵² *The Huntress*, 2 Ware (Dav.), 82, Fed. Cas. No. 6914.

lections and treatises as sources of the rules.¹⁵³ The courts of admiralty are not bound by the strict rules of the common law, but act upon enlarged principles of equity.¹⁵⁴

The jurisdiction, while granted partly because of its close alliance to the commerce power, is nevertheless independent of that power.¹⁵⁵ This clause makes the judicial power in admiralty and maritime cases coextensive with the power of Congress over the same subject.¹⁵⁶ The whole subject belongs exclusively to the federal government,^{156a} and the jurisdiction of the federal courts is exclusive,¹⁵⁷ not only as to the cognizance of the case, but the jurisprudence and principles by which it is administered.¹⁵⁸

Jurisdiction in admiralty and maritime is expressly granted by the constitution,¹⁵⁹ but its exercise, as in all other cases of grants of judicial power to inferior federal courts, depends upon congressional legislation,¹⁶⁰ and Congress may limit or

¹⁵³ *The Maggie Hammond*, 9 Wall. 452, 19 L. ed. 772; *Butler v. Boston Steamship Co.*, 130 U. S. 556, 9 S. Ct. 612, 32 L. ed. 1017,

¹⁵⁴ *The Virgin v. Vyfhius*, 8 Pet. 550, 8 L. ed. 1036; *Oakes v. United States*, 174 U. S. 790, 19 S. Ct. 864, 43 L. ed. 1169; *O'Brien v. Miller*, 168 U. S. 287, 18 S. Ct. 140, 42 L. ed. 469.

¹⁵⁵ *The Genessee Chief v. Fitzhugh*, 12 How. 443, 13 L. ed. 1053; *The Belfast*, 7 Wall. 624, 19 L. ed. 266; *The Sarah Jane*, 1 Low, 203, Fed. Cas. No. 12,349.

¹⁵⁶ *The Huntress*, 2 Ware (Dav.), 82, Fed. Cas. No. 6914.

^{156a} *United States v. Bevans*, 3 Wheat. 389, 4 L. ed. 404; *In re Garnett*, 141 U. S. 1-18, 11 S. Ct. 840, 35 L. ed. 631.

¹⁵⁷ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *American Ins. Co. v. Cotton*, 1 Pet. 511, 7 L. ed. 242; *The Moses Taylor*, 4 Wall. 411, 18 L. ed. 397; *The Hine v. Trevor*, 4 Wall. 555, 18 L. ed. 451; *Ex parte Easton*, 95 U. S. 70, 24 L. ed. 373; *Moran v. Sturges*, 154 U. S. 276, 14 S. Ct. 1019, 38 L. ed. 981.

¹⁵⁸ *The Chusan*, 2 Story, 455, Fed. Cas. No. 2717.

¹⁵⁹ *Carpenter v. The Emma Johnson*, 1 Cliff. 633, Fed. Cas. No. 2430.

¹⁶⁰ *United States v. Bevans*, 3 Wheat. 337, 4 L. ed. 404; *Jackson v. The Magnolia*, 20 How. 296, 15 L. ed. 909; *The City of Panama*, 101 U. S. 457, 25 L. ed. 1061.

¹⁶¹ *Carpenter v. The Emma Johnson*, 1 Cliff. 633, Fed. Cas. No. 2430.

control it,¹⁶¹ or modify the practice.¹⁶² But the jurisdiction cannot be enlarged by any law or rule of court.¹⁶³ The term includes jurisdiction of all things done upon and relating to the sea and for damages for injuries on the high seas,¹⁶⁴ the subject matter in cases of contract and the locality in cases of tort being the true tests of jurisdiction.¹⁶⁵

The jurisdiction is not confined to the high seas, but extends to the navigable lakes and rivers of the United States,¹⁶⁶ regardless of the ebb and flow of the tide.¹⁶⁷ The grant does not operate to extend control over waters ceded to the several states and does not affect general state jurisdiction over state waters.¹⁶⁸ The power of the states to regulate their fisheries was not surrendered by the grant of admiralty and maritime jurisdiction.¹⁶⁹

¹⁶² *The Lottawanna*, 21 Wall. 577, 22 L. ed. 654; *The Genessee Chief v. Fitzhugh*, 12 How. 443, 13 L. ed. 1058.

¹⁶³ *The Steamer St. Lawrence*, 1 Black, 526, 17 L. ed. 180; *Butler v. Boston Steamship Co.*, 130 U. S. 557, 9 S. Ct. 619, 32 L. ed. 1017; *The Electron*, 74 Fed. 695.

¹⁶⁴ *Bingham v. Cabbot*, 3 Dall. 33, 1 L. ed. 491; *Janney v. Columbian Ins. Co.*, 10 Wheat. 418, 6 L. ed. 354; *Mauro v. Almeida*, 10 Wheat. 496, 6 L. ed. 369; *Sears v. Wills*, 1 Black, 113, 17 L. ed. 35; *The Barnstable*, 181 U. S. 467, 21 S. Ct. 684, 45 L. ed. 954.

¹⁶⁵ *Waring v. Clarke*, 5 How. 452, 459, 12 L. ed. 226; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 392, 12 L. ed. 465.

¹⁶⁶ *The Genessee Chief v. Fitzhugh*, 12 How. 454, 13 L. ed. 1058; *Fretz v. Bull*, 12 How. 468, 13 L. ed. 1068; *The Eagle*, 8 Wall. 20, 19 L. ed. 365; *Ex parte Boyer*, 109 U. S. 632, 3 S. Ct. 435, 27 L. ed. 1056; *Malony v. Milwaukee*, 1 Fed. 613; *The Arkansas*, 5 McCrary, 366, 17 Fed. 384.

¹⁶⁷ *The Genessee Chief v. Fitzhugh*, 12 How. 454, 13 L. ed. 1058; *Jackson v. The Magnolia*, 20 How. 301, 15 L. ed. 909; *The Hine v. Trevor*, 24 Wall. 565, 18 L. ed. 451; *In re Garnett*, 141 U. S. 15, 1 S. Ct. 840, 35 L. ed. 631.

¹⁶⁸ *United States v. Bevans*, 3 Wheat. 387, 4 L. ed. 404; *Steamboat Co. v. Chase*, 16 Wall. 531, 21 L. ed. 369; *Smith v. Maryland*, 18 How. 76, 15 L. ed. 269; *The Wave v. Hyer*, 2 Paine, 143, Fed. Cas. No. 1730; *United States v. Peterson*, 64 Fed. 147; *In re Kelley*, 71 Fed. 547.

¹⁶⁹ *Smith v. Maryland*, 18 How. 76, 15 L. ed. 269; *Manchester v. Massachusetts*, 139 U. S. 261, 11 S. Ct. 563, 35 L. ed. 159; *Corfield v. Coryell*, 4 Wash. C. C. 371, Fed. Cas. No. 3230; *The Elexena*, 53 Fed. 366; *Dunham v. Lamphere*, 3 Gray, 270.

— What are Admiralty and Maritime Cases.

The subject matter of a transaction or the locality of an act done determines the character of the particular case,¹⁷⁰ but jurisdiction over the case does not constitute the case itself.¹⁷¹ The citizenship of the parties to the cause is of no moment in determining jurisdiction;¹⁷² but one having a right to enforce a lien in admiralty may waive the lien and sue in personam if the citizenship of the parties is diverse,¹⁷³ the suit thus ceasing to be of one cognizable in a court of admiralty.¹⁷⁴ The jurisdiction extends to all maritime contracts, and all torts committed on navigable waters,¹⁷⁵ and to all suits for liens of materialmen and for services, both in personam and in rem.¹⁷⁶ But in matters of contract the jurisdiction of courts of admiralty is limited to those, and those only, which are maritime.¹⁷⁷

A bond given to secure the performance of a maritime contract is itself a maritime contract enforceable in admiralty;¹⁷⁸

¹⁷⁰ *Waring v. Clarke*, 5 How. 452, 459, 12 L. ed. 226; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 392, 12 L. 465.

¹⁷¹ *American Ins. Co. v. Cotton*, 1 Pet. 545, 7 L. ed. 242.

¹⁷² *Peyroux v. Howard*, 7 Pet. 324, 8 L. ed. 700; *The Calisto*, 2 Ware, 30, Fed. Cas. No. 2316.

¹⁷³ *Norton v. Switzer*, 93 U. S. 356, 23 L. ed. 903; *American Steamboat Co. v. Chase*, 16 Wall. 533, 21 L. ed. 369.

¹⁷⁴ *Johnson v. Chicago etc. Elevator Co.*, 119 U. S. 397, 7 S. Ct. 254, 30 L. ed. 447.

¹⁷⁵ *Waring v. Clarke*, 5 How. 489, 12 L. ed. 226; *Gloucester Ins. Co. v. Younger*, 2 Curt. 332, Fed. Cas. No. 5487; *De Lovio v. Boit*, 2 Gall. 398, Fed. Cas. No. 3776.

¹⁷⁶ *Sheppard v. Taylor*, 5 Pet. 711, 8 L. ed. 269; *The General Smith*, 4 Wheat. 443, 4 L. ed. 609; *The Thomas Jefferson*, 10 Wheat. 429, 6 L. ed. 358; *Leon v. Galceran*, 11 Wall. 188, 20 L. ed. 74; *Gardner v. New Jersey*, 1 Pet. Adm. 227, Fed. Cas. No. 5233; *Wick v. The Samuel Strong*, 6 McLean, 587, Fed. Cas. No. 17,607; *The Robert Fulton*, 1 Paine, 620, Fed. Cas. No. 11,890; *Zane v. The President*, 4 Wash. C. C. 453, Fed. Cas. No. 18,201.

¹⁷⁷ *The Orleans v. Phoebus*, 11 Pet. 183, 9 L. ed. 677; *The Thomas Jefferson*, 10 Wheat. 489, 6 L. ed. 358; *Andrews v. Wall*, 3 How. 572, 11 L. ed. 729; *People's Ferry Co. v. Beers*, 20 How. 401, 15 L. ed. 96; *Ex parte Easton*, 95 U. S. 72, 24 L. ed. 373; *The Resolute*, 163 U. S. 439, 18 S. Ct. 112, 42 L. ed. 533.

¹⁷⁸ *Holler v. Fox*, 51 Fed. 298.

as also is a bottomry bond;¹⁷⁹ but a mere mortgage of a ship, other than that of an hypothecated bottomry, is not such a contract.¹⁸⁰ A contract to build a ship or to furnish materials for that purpose is not maritime,¹⁸¹ and so a lien based upon a contract is not enforceable in admiralty;¹⁸² but a contract to repair a ship is maritime and a lien may be enforced,¹⁸³ unless the repairs were made in the vessel's home port, when the enforcement of the lien will depend upon its existence under local law.¹⁸⁴ An agreement of consortium may be enforced in admiralty;¹⁸⁵ also a contract of affreightment;¹⁸⁶ of wharfage;¹⁸⁷ of pilotage;¹⁸⁸ of marine insurance.¹⁸⁹ A partnership agreement between owners of a vessel or a charter is not a maritime contract,¹⁹⁰ and admiralty cannot entertain an ac-

¹⁷⁹ *Blaine v. The Charles Carter*, 4 Cr. 332, 2 L. ed. 636.

¹⁸⁰ *Bogart v. The Steamboat John Jay*, 17 How. 402, 15 L. ed. 95; *Schuchardt v. Babbidge*, 19 How. 240, 15 L. ed. 625; *The J. E. Rumbell*, 148 U. S. 15, 13 S. Ct. 498, 37 L. ed. 345.

¹⁸¹ *Roach v. Chapman*, 22 How. 132, 16 L. ed. 294; *Morewood v. Enequist*, 23 How. 494, 16 L. ed. 516; *Edwards v. Elliott*, 21 Wall. 556, 22 L. ed. 487.

¹⁸² *People's Ferry Co. v. Beers*, 20 How. 401, 15 L. ed. 96; *Norton v. Switzer*, 93 U. S. 366, 23 L. ed. 903.

¹⁸³ *The Aurora*, 1 Wheat. 105, 4 L. ed. 45; *The General Smith*, 4 Wheat. 443, 4 L. ed. 609.

¹⁸⁴ *The General Smith*, 4 Wheat. 443, 4 L. ed. 609; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 391, 12 L. ed. 465; *The Glide*, 167 U. S. 624, 17 S. Ct. 930, 42 L. ed. 296.

¹⁸⁵ *Andrews v. Wall*, 3 How. 571, 11 L. ed. 729.

¹⁸⁶ *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 385, 12 L. ed. 465; *Morewood v. Enequist*, 23 How. 493, 16 L. ed. 516; *Sears v. Wills*, 1 Black, 112, 17 L. ed. 35; *The Moses Taylor*, 4 Wall. 427, 18 L. ed. 397; *The Eddy*, 5 Wall. 494, 18 L. ed. 486; *Baltimore etc. Co. v. Patterson*, 106 Fed. 736.

¹⁸⁷ *Ex parte Easton*, 95 U. S. 72; *Braisted v. Denton*, 115 Fed. 428.

¹⁸⁸ *Hobart v. Drogan*, 10 Pet. 120, 9 L. ed. 363; *Ex parte McNeil*, 13 Wall. 242, 20 L. ed. 624; *Ex parte Hagar*, 104 U. S. 521, 26 L. ed. 816.

¹⁸⁹ *Croudson v. Leonard*, 4 Cr. 437, 2 L. ed. 670; *New England etc. Ins. Co. v. Dunham*, 11 Wall. 31, 20 L. ed. 90.

¹⁹⁰ *Ward v. Thompson*, 22 How. 333, 16 L. ed. 249.

tion for an accounting under such an agreement.¹⁹¹ Admiralty has jurisdiction of a suit to recover a seaman's wages, both in rem and in personam,¹⁹² A contract for services, such as are usually performed by a ship's brokers and business agents, and performed on land, is not, however, a maritime contract.¹⁹³

The jurisdiction extends to actions of tort committed on navigable waters.¹⁹⁴ although committed within the body of a county,¹⁹⁵ and without reference to the voyage or destination of the vessel.¹⁹⁶ It depends solely upon the commission of the wrongful act upon navigable water.¹⁹⁷ A case of collision is a marine tort,¹⁹⁸ and admiralty has jurisdiction of a suit for an injury caused to a vessel by running upon a sunken obstruction.¹⁹⁹ Where, however, the substance and consummation of the wrong take place on land and not upon the water admiralty has no jurisdiction.²⁰⁰ So where the injury consists in setting buildings on fire from a passing vessel a suit cannot be maintained in admiralty.²⁰¹ To be cognizable in admiralty a tort need not arise on the high seas or upon the navigable waters of the United States; it may even originate in a foreign port and

¹⁹¹ *Steamboat Orleans v. Phoebus*, 11 Pet. 183, 9 L. ed. 677; *Grant v. Poillon*, 20 How. 169, 15 L. ed. 871.

¹⁹² *Sheppard v. Taylor*, 5 Pet. 711, 8 L. ed. 269; *Leon v. Galceran*, 11 Wall. 188, 20 L. ed. 74.

¹⁹³ *The Humboldt*, 86 Fed. 351.

¹⁹⁴ *Philadelphia etc. R. R. Co. v. Philadelphia etc. Towboat Co.*, 23 How. 215, 16 L. ed. 433.

¹⁹⁵ *Roberts v. Skolfield*, 3 Ware, 184, 8 Am. Law Reg. 156, Fed. Cas. No. 11,917; *Lathers v. Blessing*, 105 U. S. 630, 26 L. ed. 1192.

¹⁹⁶ *In re Garnett*, 141 U. S. 16, 11 S. Ct. 840, 35 L. ed. 631.

¹⁹⁷ *The Belfast*, 7 Wall. 637, 19 L. ed. 266; *American Steamboat Co. v. Chase*, 16 Wall. 531, 21 L. ed. 364; *In re Fassett*, 142 U. S. 479, 12 S. Ct. 295, 35 L. ed. 1087.

¹⁹⁸ *Hine v. The Trevor*, 4 Wall. 568, 18 L. ed. 451.

¹⁹⁹ *Panama R. R. Co. v. Napier etc. Co.*, 166 U. S. 285, 17 S. Ct. 572, 41 L. ed. 1004.

²⁰⁰ *Johnson v. Chicago etc. Elevator Co.*, 119 U. S. 397, 7 S. Ct. 254, 30 L. ed. 441.

²⁰¹ *Ex parte Phenix Ins. Co.*, 118 U. S. 616, 7 S. Ct. 25, 30 L. ed. 274.

be the subject of an action in United States courts.²⁰² An injury to a passenger from a boiler explosion is a maritime tort.²⁰³ In the absence, however, of some statute, state or federal, a court of admiralty cannot entertain an action for the death of a person caused by another's negligence on the high seas,²⁰⁴ and even where a local statute permits an action, admiralty cannot entertain a libel in rem if the statute gives no lien.²⁰⁵ Every violent dispossession of property on the seas is *prima facie* a maritime tort,²⁰⁶ but admiralty jurisdiction is not confined to torts committed by direct force; it extends to torts of negligence and malfeasance.²⁰⁷

The states cannot, by local legislation, enlarge or limit the jurisdiction of the federal courts in admiralty.²⁰⁸ By this clause the states parted with all power to legislate concerning admiralty and maritime matters;²⁰⁹ accordingly they cannot confer on their own courts jurisdiction of suits cognizable solely in admiralty.²¹⁰ But in certain cases jurisdiction is concurrent, and the ninth section of the judiciary act expressly saves to suitors in all cases a common-law remedy where the common law is competent to give it.²¹¹ So personal suits on

²⁰² *Panama etc. R. R. Co. v. Napier etc. Co.*, 166 U. S. 285, 17 S. Ct. 572, 41 L. ed. 1004.

²⁰³ *The New World v. King*, 16 How. 472, 14 L. ed. 1019.

²⁰⁴ *The Harrisburg*, 119 U. S. 214, 7 S. Ct. 140, 30 L. ed. 358; *The Alaska*, 130 U. S. 209, 9 S. Ct. 461, 32 L. ed. 923; *Butler v. Boston Steamship Co.*, 130 U. S. 555, 9 S. Ct. 612, 32 L. ed. 1017.

²⁰⁵ *The Corsair*, 145 U. S. 343, 12 S. Ct. 949, 36 L. ed. 727.

²⁰⁶ *L'Invincible*, 1 Wheat. 257, 4 L. ed. 80.

²⁰⁷ *Philadelphia etc. R. R. Co. v. Philadelphia etc. Towboat Co.*, 23 How. 215, 216, 16 L. ed. 433.

²⁰⁸ *The Steamer St. Lawrence*, 1 Black, 526, 17 L. ed. 180; *The Hine v. Trevor*, 4 Wall. 570, 18 L. ed. 451; *The Lottawanna*, 21 Wall. 580, 22 L. ed. 654; *The J. E. Rumbell*, 148 U. S. 12, 13 S. Ct. 498, 37 L. ed. 345; *New Zealand Ins. Co. v. Earnmoor S. S. Co.*, 79 Fed. 369; *The H. E. Willard*, 53 Fed. 599.

²⁰⁹ *Smith v. Maryland*, 18 How. 76, 15 L. ed. 269.

²¹⁰ *Taylor v. Carryl*, 20 How. 598, 15 L. ed. 1028.

²¹¹ *Waring v. Clarke*, 5 How. 461, 12 L. ed. 226; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 390, 12 L. ed. 465; *Taylor v. Carryl*, 20 How. 598, 15 L. ed. 1028; *The Belfast*, 7 Wall. 644, 19 L.

maritime contracts may be maintained in state courts,²¹² and an action to enforce a lien for towage by foreclosure under a state law is a suit in personam to enforce a common-law remedy saved by the Revised Statutes, section 563.²¹³ An action for damages caused by a burning vessel cut loose by the defendant's servants is an action for a remedy which the common law is competent to give.²¹⁴

While the states cannot confer any jurisdiction upon admiralty courts,²¹⁵ yet a lien given by local law for a maritime service may be enforced in admiralty.²¹⁶ In all such cases, however, the jurisdiction to enforce the lien is, because of the maritime nature of the service for which it is given, exclusive in the admiralty courts.²¹⁷

ed. 266; *Leon v. Galceran*, 11 Wall. 190, 20 L. ed. 74; *Schoonmaker v. Gilmore*, 102 U. S. 119, 26 L. ed. 95.

²¹² *Manchester v. Massachusetts*, 139 U. S. 262, 11 S. Ct. 559, 35 L. ed. 159.

²¹³ *Knapp v. McCaffrey*, 177 U. S. 647, 20 S. Ct. 854, 44 L. ed. 921.

²¹⁴ *Chappell v. Bradshaw*, 128 U. S. 134, 9 S. Ct. 40, 32 L. ed. 369.

²¹⁵ *The Steamer St. Lawrence*, 1 Black, 526, 17 L. ed. 180; *The H. E. Willard*, 53 Fed. 600; *The Electron*, 74 Fed. 695.

²¹⁶ *Peyroux v. Howard*, 7 Pet. 341, 8 L. ed. 700; *Steamboat Orleans v. Phoebus*, 11 Pet. 184, 9 L. ed. 677; *Maguire v. Card*, 21 How. 251, 16 L. ed. 118; *The Ship Potomac*, 2 Black, 583, 17 L. ed. 263.

²¹⁷ *The J. E. Rumbell*, 148 U. S. 12, 13 S. Ct. 498, 37 L. ed. 345; *The Glide*, 167 U. S. 624, 17 S. Ct. 930, 42 L. ed. 296.

2. In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Original Jurisdiction.

The supreme court of the United States exists by virtue of a direct grant of power from the people,¹ and this clause declares the extent of its original jurisdiction,² which Congress cannot enlarge or abridge.³ Congress cannot confer original jurisdiction in cases other than those expressly enumerated by the constitution.⁴ Its jurisdiction is both original and exclusive,⁵ and coextensive with the judicial power;⁶ but it is special and limited, and confined to particular cases, controversies and parties,⁷ and in those cases where the constitution confers original jurisdiction, appellate jurisdiction is impliedly forbidden.⁸

¹ *Rhode Island v. Massachusetts*, 12 Pet. 720, 9 L. ed. 1235.

² *Pennsylvania v. Quicksilver Co.*, 10 Wall. 553, 19 L. ed. 998; *Delafield v. State*, 2 Hill, 159.

³ *Cohen v. Virginia*, 6 Wheat. 396, 5 L. ed. 257; *United States v. Ferreira*, 13 How. 49, 14 L. ed. 42; *Ex parte Yerger*, 8 Wall. 98, 19 L. ed. 332; *United States v. Old Settlers*, 148 U. S. 466, 13 S. Ct. 650, 37 L. ed. 509; *California v. Southern Pacific Co.*, 157 U. S. 261, 14 S. Ct. 1138, 39 L. ed. 683.

⁴ *Ex parte Yerger*, 8 Wall. 98, 19 L. ed. 332; *In re Metzger*, 5 How. 176, 12 L. ed. 104; *In re Kaine*, 14 How. 103, 14 L. ed. 345.

⁵ *United States v. Ortega*, 11 Wheat. 467, 6 L. ed. 521; *Houston v. Moore*, 5 Wheat. 1, 5 L. ed. 19; *Marbury v. Madison*, 1 Cr. 137, 2 L. ed. 60; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204. But see *United States v. Ravara*, 2 Dall. 297, Fed. Cas. No. 16,122; *Chisholm v. Georgia*, 2 Dall. 419, 1 L. ed. 440; *The Exchange v. McFaddin*, 7 Cr. 116, 3 L. ed. 287.

⁶ *Osborne v. United States Bank*, 9 Wheat. 820, 6 L. ed. 204.

⁷ *Rhode Island v. Massachusetts*, 12 Pet. 657, 9 L. ed. 1233.

⁸ *Osborne v. United States Bank*, 9 Wheat. 820, 6 L. ed. 204.

The grant of original jurisdiction in the cases specified implies a prohibition against the concurrent exercise of that jurisdiction by any other courts.⁹ The practice in the supreme court is regulated by the common law and acts of Congress,¹⁰ but the court may make rules, not inconsistent with federal laws, prescribing forms of writs and other process, at common law, as well as in equity or admiralty, in all the federal courts,¹¹ and in the absence of congressional legislation may prescribe the form and mode of proceedings so as to attain the object for which jurisdiction was given.¹² It cannot, however, by rule, enlarge or restrict its own inherent jurisdiction and powers, or those of any federal court or judge.¹³ The constitution left it to Congress to organize the supreme court and to define its powers consistently with the constitution, and to distribute the residue of the judicial power.¹⁴ The original jurisdiction of the supreme court should be sparingly exercised and not expanded by construction; it does not follow that because a case, by virtue of its subject matter, comes within the federal judicial power, it is within the original jurisdiction of the supreme court.¹⁵ Its original jurisdiction depends solely upon the character of the parties, and is confined to cases in which are the parties enumerated.¹⁶

The supreme court's original jurisdiction extends to all cases affecting foreign ministers, although they may not be parties to the record,¹⁷ but although the constitution vests in the supreme court original jurisdiction in cases affecting ambassadors

⁹ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60; *Virginia v. Rives*, 100 U. S. 327, 25 L. ed. 667.

¹⁰ *Graham v. Bayne*, 18 How. 62, 15 L. ed. 265.

¹¹ *Hudson v. Parker*, 156 U. S. 282, 15 S. Ct. 450, 39 L. ed. 424.

¹² *Florida v. Georgia*, 17 How. 478, 15 L. ed. 181.

¹³ *Hudson v. Parker*, 156 U. S. 284, 15 S. Ct. 450, 39 L. ed. 424.

¹⁴ *Chisholm v. Georgia*, 2 Dall. 419, 1 L. ed. 440; *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Rhode Island v. Massachusetts*, 12 Pet. 657, 9 L. ed. 1233.

¹⁵ *California v. Southern Pacific Co.*, 157 U. S. 261, 15 S. Ct. 591, 9 L. ed. 1233.

¹⁶ *Louisiana v. Texas*, 176 U. S. 16, 20 S. Ct. 251, 44 L. ed. 347.

¹⁷ *Osborne v. United States Bank*, 9 Wheat. 854, 6 L. ed. 204.

and consuls, that jurisdiction is not exclusive, and subordinate federal courts may be invested with a concurrent jurisdiction,¹⁸ and the jurisdiction of an inferior court over a controversy between a citizen and an alien is not defeated because the alien is a citizen of a foreign government.¹⁹ A state court has no jurisdiction over an action against a foreign minister; his person is inviolable and his residence is regarded as a part of the territory of the government from which he is sent.²⁰ The servants of foreign ministers have been held to be entitled to the same protection,²¹ and the secretary of a foreign legation has been held exempt from civil and criminal process.²² But it has been held that a consul is not a foreign minister, and in the absence of any federal law to the contrary, a state may entertain a suit against him, or imprison him for a crime.²³ An indictment against a private person for assault upon an ambassador or public minister is not a case affecting such minister within this clause.²⁴

Jurisdiction of suits wherein a state shall be a party was given to the supreme court to secure an impartial tribunal for their adjudication.²⁵ This clause does not contemplate political communities other than states.²⁶ The "state" must be a member of the Union, with a government competent to represent it in its relations with the national government,²⁷ and the

¹⁸ *United States v. Ravara*, 2 Dall. 297; *Bors v. Preston*, 111 U. S. 256, 4 S. Ct. 407, 28 L. ed. 419; *St. Luke's Hospital v. Barclay*, 3 Blatchf. 259, Fed. Cas. No. 12,241; *Graham v. Stucken*, 4 Blatchf. 50, Fed. Cas. No. 5677; *Gittings v. Crawford*, Taney, 1, Fed. Cas. No. 5465; *Froment v. Duclos*, 30 Fed. 385; *In re Lasigi*, 79 Fed. 754.

¹⁹ *Bors v. Preston*, 111 U. S. 261, 4 S. Ct. 407, 28 L. ed. 419.

²⁰ *United States v. Benner*, Baldw. 234, Fed. Cas. No. 15,568; *Ex parte Cabrera*, 1 Wash. C. C. 232, Fed. Cas. No. 2278; *United States v. La Fontaine*, 4 Cr. C. C. 173, Fed. Cas. No. 15,550.

²¹ *United States v. La Fontaine*, 4 Cr. C. C. 173, Fed. Cas. No. 15,550.

²² *Ex parte Cabrera*, 1 Wash. C. C. 232, Fed. Cas. No. 2278.

²³ *Wilcox v. Luco*, 118 Cal. 642, 62 Am. St. Rep. 307, 50 Pac. 759, 45 L. R. A. 579. But see *Miller v. Van Loben Sels*, 66 Cal. 342, 5 Pac. 513; *Commonwealth v. Kosloff*, 5 Serg. & R. 545.

²⁴ *United States v. Ortega*, 11 Wheat. 467, 6 L. ed. 521.

²⁵ *Chisholm v. Georgia*, 2 Dall. 475, 1 L. ed. 440.

²⁶ *Texas v. White*, 7 Wall. 719, 19 L. ed. 227.

²⁷ *Texas v. White*, 7 Wall. 726, 19 L. ed. 227.

jurisdiction conferred is jurisdiction over civil cases.²⁸ The supreme court has no original jurisdiction in a case where a state is endeavoring to enforce its domestic penal laws.²⁹

Unlike suits affecting ambassadors and public ministers, in a suit in which a state is a party, it must be a party to the record to give the supreme court jurisdiction;³⁰ it must be a case where a state is at the same time nominally a party and substantially affected,³¹ or has a direct interest in the controversy,³² as where the suit is by or against the governor in his official capacity,³³ or a suit against any other state officer where the state is the real party in interest.³⁴ The mere fact, however, that a state is a party is not a conclusive test of jurisdiction.³⁵ Thus the original jurisdiction of the supreme court does not extend to a suit by a state against one of its own corporations;³⁶ nor to a suit by a state to recover a penalty for a breach of its own laws,^{36a} nor to an action by a state upon a

²⁸ *Chisholm v. Georgia*, 2 Dall. 431, 1 L. ed. 440; *In re Pacific Railroad Com.*, 12 Saw. 582, 32 Fed. 255.

²⁹ *Cohens v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 298, 8 S. Ct. 738, 32 L. ed. 239.

³⁰ *Bank of United States v. Planters' Bank*, 9 Wheat. 906, 6 L. ed. 244; *Osborne v. United States Bank*, 9 Wheat. 854, 6 L. ed. 204; *Pennsylvania v. Wheeling Br.*, 9 How. 647, 13 L. ed. 294.

³¹ *Fowler v. Lindsey*, 3 Dall. 411, 1 L. ed. 658; *New Jersey v. New York*, 5 Pet. 287, 8 L. ed. 127; *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. ed. 25; *Ex parte Madrazo*, 7 Pet. 627, 8 L. ed. 808; *Rhode Island v. Massachusetts*, 12 Pet. 67, 9 L. ed. 1233; *Pennsylvania v. Wheeling Br.*, 18 How. 421, 15 L. ed. 435.

³² *Pennsylvania v. Wheeling Br.*, 9 How. 647, 13 L. ed. 294.

³³ *Georgia v. Brailsford*, 2 Dall. 402, 1 L. ed. 433; *Kentucky v. Dennison*, 24 How. 97, 16 L. ed. 717; *Governor of Georgia v. Slaves*, 1 Pet. 124, 7 L. ed. 73.

³⁴ *Hagood v. Southern*, 117 U. S. 67, 6 S. Ct. 608, 29 L. ed. 805; *Louisiana v. Steele*, 134 U. S. 232, 10 S. Ct. 511, 33 L. ed. 891.

³⁵ *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 287, 8 S. Ct. 738, 32 L. ed. 239; *California v. Southern Pacific Co.*, 157 U. S. 261, 15 S. Ct. 591, 39 L. ed. 683.

³⁶ *Pennsylvania v. Quicksilver Co.*, 10 Wall. 556, 19 L. ed. 998.

^{36a} *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 294, 8 S. Ct. 738, 32 L. ed. 239.

judgment recovered in its own courts.³⁷ Nor will the supreme court, in the exercise of its original jurisdiction, determine political questions as between states.³⁸ There must be some substantial right of property involved.³⁹ A suit to determine boundaries between states involves such a right and is cognizable;⁴⁰ as also does a suit by the United States to determine the boundary between a state and a territory.⁴¹ A suit by one state against another to determine the right of the latter to deprive the former of water from a river flowing through both is within the original jurisdiction of the supreme court.⁴²

Appellate Jurisdiction.

In those cases where the constitution confers original jurisdiction upon the supreme court appellate jurisdiction is forbidden; in every other case the power is to be exercised as original or appellate as Congress may direct,⁴³ and its appellate jurisdiction extends to all other cases to which the judicial power of the United States extends, "with such exceptions as Congress shall make";⁴⁴ but, as is the case with the exercise of original jurisdiction by inferior courts, the power to exercise appellate jurisdiction must come from Congress.⁴⁵ The con-

³⁷ *Huntington v. Attrill*, 146 U. S. 672, 13 S. Ct. 224, 36 L. ed. 1123.

³⁸ *Louisiana v. Texas*, 176 U. S. 23, 20 S. Ct. 251, 44 L. ed. 347.

³⁹ *New York v. Connecticut*, 4 Dall. 4, 1 L. ed. 715.

⁴⁰ *New Jersey v. New York*, 5 Pet. 290, 8 L. ed. 127; *Rhode Island v. Massachusetts*, 12 Pet. 720, 9 L. ed. 1233; *Missouri v. Iowa*, 7 How. 677, 12 L. ed. 861; *Florida v. Georgia*, 17 How. 491, 15 L. ed. 181; *Missouri v. Kentucky*, 11 Wall. 395, 20 L. ed. 116; *Virginia v. Tennessee*, 148 U. S. 504, 13 S. Ct. 728, 37 L. ed. 537.

⁴¹ *United States v. Texas*, 143 U. S. 641, 12 S. Ct. 488, 36 L. ed. 285.

⁴² *Kansas v. Colorado*, 185 U. S. 142, 22 S. Ct. 552, 46 L. ed. 838.

⁴³ *Osborne v. United States Bank*, 9 Wheat. 820, 6 L. ed. 204.

⁴⁴ *United States v. American Bell Telephone Co.*, 159 U. S. 543, 16 S. Ct. 69, 40 L. ed. 255.

⁴⁵ *United States v. More*, 3 Cr. 173, 2 L. ed. 397; *United States v. Young*, 94 U. S. 259, 24 L. ed. 153; *United States v. Sanges*, 144 U. S. 319, 12 S. Ct. 609, 36 L. ed. 445; *National Exchange Bank v. Peters*, 144 U. S. 572, 12 S. Ct. 767, 36 L. ed. 545; *Colorado Min. Co. v. Turck*, 150 U. S. 141, 14 S. Ct. 35, 37 L. ed. 1030.

stitution gives the supreme court capacity to take jurisdiction, and an act of Congress is necessary to give the requisite authority to exercise it.⁴⁶ So if Congress has provided no rule to regulate the proceedings of the supreme court, it cannot exercise appellate jurisdiction;⁴⁷ but if the rule has been given it cannot be departed from.⁴⁸ By the judiciary act of 1789, Congress made exceptions to the appellate jurisdiction of the court by affirmatively stating its jurisdiction, thus implying a negative on its exercise of a greater jurisdiction; but where the jurisdiction is described in general terms so as to comprehend a particular case, no presumption can be indulged of an intent to restrict such jurisdiction.⁴⁹

Where original jurisdiction is founded on the character of the parties, the judicial power cannot be exercised in its appellate form;⁵⁰ but where it is founded on the nature of the controversy the appellate jurisdiction attaches.⁵¹ The essential criterion of appellate jurisdiction is that it raises and corrects proceedings in a cause already instituted.⁵² The object and policy of the acts of Congress in relation to appeals have been to save the expense and delay of repeated appeals in the same suit,⁵³ and the principle upon which appellate jurisdiction from state courts is allowed is to grant efficient and just means of self-protection.⁵⁴

The jurisdiction of the supreme court over inferior courts is strictly appellate.⁵⁵ It is not limited to any particular

⁴⁶ *Daniels v. Railroad Co.*, 3 Wall. 254, 18 L. ed. 227.

⁴⁷ *Wiscart v. D'Auchy*, 3 Dall. 328, 1 L. ed. 619.

⁴⁸ *Wiscart v. D'Auchy*, 3 Dall. 328, 1 L. ed. 619; *Ex parte McCordle*, 7 Wall. 513, 19 L. ed. 264; *The Francis Wright*, 105 U. S. 384, 26 L. ed. 1100; *American Construction Co. v. Jacksonville etc. Ry. Co.*, 148 U. S. 378, 13 S. Ct. 758, 37 L. ed. 486.

⁴⁹ *United States v. American Bell Telephone Co.*, 159 U. S. 549, 16 S. Ct. 69, 40 L. ed. 255.

⁵⁰ *Osborne v. United States Bank*, 9 Wheat. 820, 6 L. ed. 204.

⁵¹ *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Cohen v. Virginia*, 6 Wheat. 264, 5 L. ed. 257.

⁵² *Marbury v. Madison*, 1 Cr. 175, 2 L. ed. 60.

⁵³ *Forgay v. Conrad*, 6 How. 206, 12 L. ed. 404.

⁵⁴ *Scott v. Jones*, 5 How. 343, 12 L. ed. 181.

⁵⁵ *Gaines v. Relf*, 15 Pet. 17, 10 L. ed. 642.

courts.^{55a} It may be exercised over territorial courts,⁵⁶ but not without authority of Congress.⁵⁷ The twenty-fifth section of the judiciary act allows writs of error to the supreme court from state courts where federal rights and questions are involved, and was within the power of Congress to enact,⁵⁸ but this gives to the supreme court no general power of review for the correction of errors.⁵⁹ The supreme court may review judgments of the court of claims in the exercise of its general jurisdiction,⁶⁰ but the act confers power to review questions of law only.⁶¹ Its jurisdiction in prize cases is appellate only.⁶² It has no appellate power over special tribunals, and cannot take jurisdiction of any decision, on appeal, unless made by an inferior court exercising independently the judicial power granted to the United States.⁶³

The federal system of criminal law does not contemplate a general right of appeal to the supreme court in criminal cases;⁶⁴ the authority to review such cases must be expressly given.⁶⁵

^{55a} *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Cohen v. Virginia*, 6 Wheat. 264, 5 L. ed. 257; *Dodge v. Woolsey*, 18 How. 331, 15 L. ed. 401; *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169.

⁵⁶ *Benner v. Porter*, 9 How. 244, 13 L. ed. 119; *Hunt v. Palao*, 4 How. 589, 11 L. ed. 1115; *Freeborn v. Smith*, 2 Wall. 173, 17 L. ed. 922.

⁵⁷ *McNulty v. Batty*, 10 How. 79, 13 L. ed. 333.

⁵⁸ *Martin v. Hunter*, 1 Wheat. 351, 4 L. ed. 97; *Murdock v. City of Memphis*, 20 Wall. 619, 22 L. ed. 429.

⁵⁹ *Central Land Co. v. Laidley*, 159 U. S. 110, 16 S. Ct. 80, 40 L. ed. 91.

⁶⁰ *United States v. Jones*, 119 U. S. 480, 7 S. Ct. 283, 30 L. ed. 440.

⁶¹ *Talbert v. United States*, 155 U. S. 46, 15 S. Ct. 4, 39 L. ed. 64.

⁶² *The Alicia*, 7 Wall. 573, 19 L. ed. 84.

⁶³ *Gordon v. United States*, 117 U. S. 704, 2 Wall. 561, 17 L. ed. 921.

⁶⁴ *Ex parte Watkins*, 3 Pet. 201, 7 L. ed. 650; *Forsyth v. United States*, 9 How. 572, 13 L. ed. 262; *United States v. Perrin*, 131 U. S. 57, 9 S. Ct. 681, 33 L. ed. 88.

⁶⁵ *Cross v. United States*, 145 U. S. 574, 12 S. Ct. 842, 36 L. ed. 821; *Bucklin v. United States*, 159 U. S. 681, 16 S. Ct. 182, 40 L. ed. 304.

The jurisdiction of the supreme court to issue the prerogative writs is limited to those cases where they are necessary to the exercise of jurisdiction already acquired.⁶⁶ The cases wherein it can issue the writs in aid of its original jurisdiction are very limited under this clause.⁶⁷ Mandamus may issue to inferior federal courts, but only in such cases as involve the exercise of the supreme court's appellate jurisdiction.⁶⁸

The same rule applies to the writ of habeas corpus.⁶⁹ The writ may issue to examine into the cause of a commitment by an inferior federal court.⁷⁰ Where, however, the court has no appellate power to review the proceedings of a court, that power cannot be usurped by means of habeas corpus.⁷¹ So the writ cannot be issued to review the proceedings of a court-martial acting within its jurisdiction.⁷² Nor will certiorari issue to review the proceedings of a court-martial or a military commission.⁷³ In such cases it is only where the tribunal acted en-

⁶⁶ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60; *California v. Southern Pacific Co.*, 157 U. S. 261, 15 S. Ct. 604, 39 L. ed. 683.

⁶⁷ *Virginia v. Rives*, 100 U. S. 327, 25 L. ed. 667; *Ex parte Hung Hang*, 108 U. S. 552, 2 S. Ct. 863, 27 L. ed. 811.

⁶⁸ *Marbury v. Madison*, 1 Cr. 173, 2 L. ed. 60; *Ex parte Crane*, 5 Pet. 200, 8 L. ed. 92; *Ex parte Newman*, 14 Wall. 165, 20 L. ed. 877.

⁶⁹ *Ex parte Bollman*, 4 Cr. 100, 2 L. ed. 554; *Ex parte Watkins*, 7 Pet. 572, 8 L. ed. 786; *In re Metzger*, 5 How. 191, 12 L. ed. 104; *In re Kaine*, 14 How. 119, 14 L. ed. 345; *Ex parte Wells*, 18 How. 317, 15 L. ed. 421; *In re Yerger*, 8 Wall. 97, 19 L. ed. 332; *Ex parte Clarke*, 100 U. S. 408, 25 L. ed. 715.

⁷⁰ *Ex parte Bollman*, 4 Cr. 101, 2 L. ed. 554; *Ex parte Watkins*, 7 Pet. 572, 8 L. ed. 786; *In re Kaine*, 14 How. 146, 14 L. ed. 345; *Ex parte Milligan*, 4 Wall. 110, 18 L. ed. 281; *Ex parte McCardle*, 6 Wall. 324, 18 L. ed. 816.

⁷¹ *Ex parte Watkins*, 3 Pet. 207, 7 L. ed. 650; *Ex parte Milburn*, 9 Pet. 704, 9 L. ed. 280; *Ex parte Wilson*, 114 U. S. 421, 5 S. Ct. 935, 29 L. ed. 89; *In re Lennon*, 150 U. S. 400, 14 S. Ct. 123, 37 L. ed. 1120.

⁷² *Ex parte Mason*, 105 U. S. 697, 26 L. ed. 1213; *McClaghry v. Deming*, 186 U. S. 69, 22 S. Ct. 786, 46 L. ed. 1049.

⁷³ *Ex parte Vallandigham*, 1 Wall. 251, 17 L. ed. 539; *In re Vidal*, 179 U. S. 127, 21 S. Ct. 48, 45 L. ed. 118.

tirely without jurisdiction that relief will be granted by habeas corpus.⁷⁴

The repeal of an act authorizing appeal in habeas corpus cases does not affect jurisdiction antecedently exercised.⁷⁵

The review of cases in the supreme court is regulated solely by act of Congress and not by state law,⁷⁶ and a compact between two states cannot deprive Congress of any of its power in this respect.⁷⁷

⁷⁴ *Ex parte Parks*, 98 U. S. 18, 23 L. ed. 787.

⁷⁵ *Ex parte McCordle*, 7 Wall. 506, 19 L. ed. 264.

⁷⁶ *Boogher v. New York Life Ins. Co.*, 103 U. S. 95, 26 L. ed. 310; *Belden v. Chase*, 150 U. S. 691, 14 S. Ct. 264, 37 L. ed. 1218.

⁷⁷ *Wilson v. Mason*, 1 Cr. 91, 2 L. ed. 29.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Trial by Jury.*

This clause applies only to criminal proceedings in the federal courts and does not govern trials in state courts.¹ The "trial" here referred to is the examination of the accused before a competent tribunal, according to the law of the land;² it is the hearing and deciding on a criminal charge, and can take place only after that charge has been legally made.³ Congress must first make an act a crime, affix the penalty and declare the court having jurisdiction.⁴

The "jury" referred to in the constitution is a jury constituted, as it was at common law, of twelve persons;⁵ and "trial by jury" is a trial by such a jury in the presence and under the superintendence of a judge empowered to instruct them upon the law and advise them upon the facts.⁶ Any law dispensing with the requisites to constitute a jury is unconstitutional.⁷

¹ *Eilenbecker v. Plymouth County*, 134 U. S. 35, 10 S. Ct. 424, 33 L. ed. 801; *Murphy v. People*, 2 Cow. 815.

² *United States v. Curtis*, 4 Mason, 232, Fed. Cas. No. 14,905.

³ *United States v. Patterson*, 150 U. S. 68, 14 S. Ct. 20, 37 L. ed. 999.

⁴ *United States v. Hudson*, 7 Cr. 33, 3 L. ed. 259; *United States v. Coolidge*, 1 Wheat. 416, 4 L. ed. 124; *United States v. Britton*, 108 U. S. 206, 2 S. Ct. 535, 27 L. ed. 698; *United States v. Eaton*, 144 U. S. 687, 12 S. Ct. 767, 36 L. ed. 591.

⁵ *Thompson v. Utah*, 170 U. S. 349, 18 S. Ct. 620, 42 L. ed. 1061; *Maxwell v. Dow*, 176 U. S. 587, 20 S. Ct. 448, 44 L. ed. 597.

⁶ *Capital Traction Co. v. Hof*, 174 U. S. 13-16, 19 S. Ct. 580, 43 L. ed. 878.

⁷ *Work v. State*, 2 Ohio St. 296, 59 Am. Dec. 671; *State v. Cox*, 3 Eng. 436.

* See, also, amendment VI, post.

While this clause provides for trial by jury in criminal cases according to settled common-law rules, the Sixth Amendment declares what those rules are, and the two provisions are not conflicting.⁸ As soon as it judicially appears of record that a person has pleaded "not guilty," an issue has arisen which the courts are bound to direct to be tried by a jury;⁹ but when the question arises whether the case is one wherein the accused is entitled to a jury, recourse must be had to the principles of the common law which are determinative of that question.¹⁰ Except as to those petty offenses which by common law may be summarily tried, the guaranty of a jury accrues to an accused person the moment he is put on trial.¹¹ So a statute which provides that a person may be tried by the court on a charge of libel is void, although it gives him a right of appeal to a court where trial may be had by jury.¹² A trial upon a charge of conducting a market in a forbidden district is not one requiring a jury;¹³ nor is a proceeding to annul the license of a pilot for neglect of duty;¹⁴ nor a proceeding to strike an attorney from the rolls for criminal offenses.¹⁵ An act authorizing the summary destruction of unlawful fishing nets is valid under this clause;¹⁶ but a statute providing for the confiscation of the property of a person engaged in rebellion, in any district in which property may be found, is void.¹⁷

A citizen in civil life in no wise connected with the military service cannot be tried by a military commission so long as the courts are open to hear criminal accusations and redress grievances.¹⁸

⁸ *Callan v. Wilson*, 127 U. S. 549, 8 S. Ct. 1301, 32 L. ed. 223.

⁹ *United States v. Gibert*, 2 Sum. 19, Fed. Cas. No. 15,204.

¹⁰ *Callan v. Wilson*, 127 U. S. 549, 8 S. Ct. 1301, 32 L. ed. 223.

¹¹ *Callan v. Wilson*, 127 U. S. 557, 8 S. Ct. 1301, 32 L. ed. 223.

¹² *Ex parte Dana*, 7 Ben. 1, Fed. Cas. No. 3554. And see *Callan v. Wilson*, 127 U. S. 557, 8 S. Ct. 1301, 32 L. ed. 223.

¹³ *Natal v. Louisiana*, 139 U. S. 624, 11 S. Ct. 637, 35 L. ed. 283.

¹⁴ *Low v. Commissioners*, R. M. Charl. 302.

¹⁵ *Ex parte Wall*, 107 U. S. 265, 2 S. Ct. 569, 27 L. ed. 552.

¹⁶ *Lawton v. Steele*, 152 U. S. 142, 14 S. Ct. 503, 38 L. ed. 385.

¹⁷ *Norris v. Doniphan*, 4 Met. (Ky.) 346.

¹⁸ *Ex parte Milligan*, 4 Wall. 123, 18 L. ed. 281.

The constitutional guaranty of a jury trial applies to the people of the territories,¹⁹ and to the District of Columbia.²⁰ Where, on a prosecution by information, the defendant refuses to plead and the court enters a plea, an issue is framed which must be tried by a jury.²¹

— Place of Trial.

The provision as to place of trial has reference only to trials in the federal courts.²² Congress has the sole power to prescribe the place of trial for offenses against federal laws not committed within any state;²³ such an offense is not local and may be tried at such place as Congress may designate.²⁴ The place of trial may be directed by Congress after the offense has been committed and before proceedings have been commenced.²⁵

Congress has power to enact laws for the arrest, commitment and custody of persons committing offenses against the United States, and such persons are in the exclusive custody of the United States, and not subject to state process or warrant.²⁶ An offense committed on the high seas is contemplated by this clause,²⁷ and an act of Congress providing for the punishment of murder on the high seas or in any bay, etc., out of the jurisdiction of any state means that the bay, etc., must be out of the jurisdiction, and not the offense itself.²⁸

The jurisdiction of a court is not affected by the manner in which an accused person is brought before it.²⁹ Under the

¹⁹ *Thompson v. Utah*, 170 U. S. 346, 18 S. Ct. 620, 42 L. ed. 1061.

²⁰ *Callan v. Wilson*, 127 U. S. 550, 8 S. Ct. 1301, 32 L. ed. 223.

²¹ *United States v. Barger*, 19 Blatchf. 250, 7 Fed. 193.

²² *Nashville etc. Ry. Co. v. Alabama*, 128 U. S. 101, 9 S. Ct. 28, 32 L. ed. 352.

²³ *Jones v. United States*, 137 U. S. 211, 11 S. Ct. 80, 34 L. ed. 691.

²⁴ *United States v. Dawson*, 15 How. 488, 14 L. ed. 775; *United States v. Jackalow*, 1 Black, 486, 17 L. ed. 225.

²⁵ *Cook v. United States*, 138 U. S. 182, 11 S. Ct. 268, 34 L. ed. 906; *Post v. United States*, 161 U. S. 587, 16 S. Ct. 611, 40 L. ed. 816.

²⁶ *Logan v. United States*, 144 U. S. 264, 12 S. Ct. 617, 36 L. ed. 429.

²⁷ *United States v. Jackalow*, 1 Black, 487, 17 L. ed. 225.

²⁸ *United States v. Bevans*, 3 Wheat. 390, 4 L. ed. 404.

²⁹ *Mahon v. Justice*, 127 U. S. 708, 8 S. Ct. 1204, 32 L. ed. 283.

act of March 3, 1825, a person is triable for an offense on the high seas in the district into which he is brought,³⁰ and for this purpose the district in which he is delivered to the marshal is the district into which he is brought, although he is first delivered to state officers in another district for safekeeping.³¹ A bank president fraudulently procuring the acceptance in another state of a check against funds deposited there is triable in that state.³²

³⁰ *Jones v. United States*, 137 U. S. 211, 11 S. Ct. 80, 34 L. ed. 691.

³¹ *United States v. Arwo*, 19 Wall. 490, 22 L. ed. 67.

³² *Putnam v. United States*, 162 U. S. 710, 16 S. Ct. 923, 40 L. ed. 1118.

SECTION 3.

TREASON.

1. Definition and evidence of.
2. Punishment of.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason, What is.

Treason is a breach of allegiance.¹ The elements which constitute treason under this clause are: a combination of conspiracy by which several are united in one common purpose;² the purpose must be to prevent the execution of some public law,³ and actual force must be employed by such combination⁴ to overthrow the government or coerce its conduct.⁵ So war must actually be levied.^{5a} The breach of allegiance may be either perpetual or temporary.⁶ Where the object of an insur-

¹ *United States v. Wiltberger*, 5 Wheat. 97, 5 L. ed. 37.

² *Ex parte Bollman*, 4 Cr. 126, 2 L. ed. 554; *Druecker v. Salomon*, 21 Wis. 621.

³ *Druecker v. Salomon*, 21 Wis. 621.

⁴ *Ex parte Burr*, 9 Wheat. 529, 6 L. ed. 152; *United States v. Mitchell*, 2 Dall. 348, Fed. Cas. No. 15,788; *United States v. Hanway*, Wall. Jr. 139, Fed. Cas. No. 15,299; *United States v. Hoxie*, 1 Paine, 265, Fed. Cas. No. 15,407; *United States v. Fries*, 2 Whart. St. Tr. 482, Fed. Cas. No. 15,170.

⁵ *United States v. Greathouse*, 2 Abb. U. S. 364, 4 Saw. 457, Fed. Cas. No. 15,254.

^{5a} *Ex parte Bollman*, 4 Cr. 126, 2 L. ed. 554.

⁶ *United States v. Wiltberger*, 5 Wheat. 76, 5 L. ed. 37.

rection of armed men is to suppress the excise offices and to prevent by force and intimidation the execution of an act of Congress, the participants therein are guilty of treason.⁷

To complete the crime of levying war against the United States there must be an actual assemblage of men for the purpose of executing a treasonable design.⁸ The mere enlistment of men to serve against the government is insufficient; but the meeting of particular bodies of men and their marching from places of partial to places of general rendezvous.⁹

The term "levying war" is used in the sense in which it was understood to have been used in 25 Edward III, from which it was taken, and it means to raise, create, make, or carry on war.¹⁰ When war has been levied, all who aid in its prosecution by performing any part, however minute, or however remote from the scene of action, are traitors.¹¹ Although no one can be convicted of treason who was not present when war was levied,¹² yet the crime may be committed by those not personally present, if they are leagued with the conspirators and perform any part;¹³ but the overt act and the intention must concur to constitute the crime.¹⁴

The occupation of a fortress by men in military array to detain it constitutes levying war.¹⁵ The offense is complete when it is directed to the overthrow of the government of por-

⁷ *United States v. Mitchell*, 2 Dall. 348, Fed. Cas. No. 15,783; *United States v. Vigol*, 2 Dall. 346, Fed. Cas. No. 16,621.

⁸ *Ex parte Bollman*, 4 Cr. 127, 2 L. ed. 554; *United States v. Grearhouse*, 2 Abb. U. S. 364, 4 Saw. 457, Fed. Cas. No. 15,254.

⁹ *Ex parte Bollman*, 4 Cr. 134, 2 L. ed. 554.

¹⁰ *United States v. Burr*, 4 Cr. 470, Fed. Cas. No. 14,693.

¹¹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *United States v. Grearhouse*, 2 Abb. U. S. 364, 4 Saw. 457, Fed. Cas. No. 15,254.

¹² *United States v. Burr*, 4 Cranch, 469, Fed. Cas. No. 14,693; *United States v. Wiltberger*, 5 Wheat. 76, 5 L. ed. 37.

¹³ *In re Bollman*, 4 Cr. 75, 2 L. ed. 554; *Druecker v. Salomon*, 21 Wis. 621.

¹⁴ *United States v. Fries*, 3 Dall. 515, Fed. Cas. No. 15,170; *United States v. Burr*, 4 Cr. 469, Fed. Cas. No. 14,693; *United States v. Hodges*, 2 Wheel. C. C. 477, Fed. Cas. No. 15,374.

¹⁵ *United States v. Greiner*, 4 Phila. 396, Fed. Cas. No. 15,262.

tions of the country only;¹⁶ hence to revolutionize by force the government of any territory of the United States would constitute levying war.¹⁷

The crime of treason is not to be extended by construction beyond the terms of this clause.¹⁸ Conspiracy to levy war and the actual levying of war are two distinct offenses.¹⁹ So resistance to the execution of a law must be of a political and not of a private nature.²⁰ An alien domiciled in the United States is bound by its law, owes it allegiance and can claim no immunity from statutes punishing treason.²¹

Rebels, being citizens, are not "enemies" under this clause.²² A *de facto* government exists in the highest degree when the *de jure* government has been entirely displaced by it, and such a government is not treason.²³ Furnishing saltpeter by parties who knew that it was to be used in manufacturing powder for the enemy constitutes "giving aid and comfort,"²⁴ and a person who sells goods to an agent of the enemy is guilty of treason or a misprision thereof.²⁵ The delivery of a prisoner to the enemy is treason.²⁶ A person who, being with a squadron,

¹⁶ *United States v. Greathouse*, 2 Abb. U. S. 364, 4 Saw. 459, Fed. Cas. No. 15,254.

¹⁷ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554.

¹⁸ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554.

¹⁹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *United States v. Mitchell*, 2 Dall. 348, Fed. Cas. No. 15,788.

²⁰ *United States v. Fries*, 3 Dall. 515, Fed. Cas. No. 15,170; *United States v. Hanway*, 2 Wall. Jr. 139, Fed. Cas. No. 15,299; *United States v. Hoxie*, 1 Paine, 265, Fed. Cas. No. 15,407.

²¹ *Hanauer v. Doane*, 12 Wall. 342, 20 L. ed. 439; *Carlisle v. United States*, 16 Wall. 147, 21 L. ed. 426; *Radich v. Hutchins*, 95 U. S. 211, 24 L. ed. 409.

²² *United States v. Greathouse*, 2 Abb. U. S. 364, 4 Saw. 457, Fed. Cas. No. 15,254; *United States v. Cheneweth*, 4 West. L. Mo. 165, 6 McLean, 139, Fed. Cas. No. 14,792.

²³ *Thorington v. Smith*, 8 Wall. 8, 19 L. ed. 361.

²⁴ *Carlisle v. United States*, 16 Wall. 150, 21 L. ed. 426.

²⁵ *Hanauer v. Doane*, 12 Wall. 347, 20 L. ed. 439.

²⁶ *United States v. Hodges*, 2 Wheel. C. C. 477, Fed. Cas. No. 15,374.

comes peaceably ashore to procure provisions, does not commit an overt act within this clause.²⁷ The only compulsion which will excuse marching with rebels is force on the person and present fear of death.²⁸ While mere attempts to enlist men in the enemy's service is not treason, yet it may be proved to show, *quo animo*, that the accused had joined the enemy, and to show aid to the enemy.²⁹

Proof of Treason.

The requirement of two witnesses refers to the proof on the trial and not to proceedings before the grand jury, or to preliminary investigations.³⁰ While a confession proved by two witnesses is not sufficient to convict, evidence thereof is admissible in corroboration of other evidence.³¹

²⁷ *United States v. Pryor*, 3 Wash. C. C. 234, Fed. Cas. No. 16,096.

²⁸ *United States v. Hodges*, 2 Wheel. C. C. 477, Fed. Cas. No. 15,374; *United States v. Greiner*, 4 Phila. 396, Fed. Cas. No. 15,262.

²⁹ *Respublica v. Roberts*, 1 Dall. 39.

³⁰ *United States v. Hanway*, 2 Wall. Jr. 138, Fed. Cas. No. 15,299; *United States v. Burr*, 4 Cr. 460, Fed. Cas. No. 14,693; *United States v. Greiner*, 4 Phila. 396, Fed. Cas. No. 15,262. But see *United States v. Fries*, 3 Dall. 515, 2 Whart. St. Tr. 480, Fed. Cas. No. 15,170.

³¹ *United States v. Greathouse*, 2 Abb. U. S. 364, 4 Saw. 457, Fed. Cas. No. 15,254.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Punishment of Treason.

The power to declare the punishment for treason is exclusively in Congress,¹ but in those cases in which this exclusive right of legislation exists it rests with Congress to determine whether the general government shall exercise its power to punish exclusively or give to the states a concurrent power.²

The prohibition against corruption of blood or forfeiture beyond the life of the person attainted was inserted for the benefit of the children and heirs of such person.³ Only a life estate terminating with the death of the offender could be sold under the confiscation act of 1862,⁴ and children of the person whose estate was condemned under that act at his death take the fee-simple, by descent as his heirs, and do not derive any title from the United States.⁵ The confiscation act was an exercise of the war power, and not a criminal proceeding.⁶

A full pardon by the President of all offenses committed by the owner of property confiscated relieves the owner from forfeiture so far as any right of the government is concerned;⁷

¹ *People v. Lynch*, 11 Johns. 553.

² *Houston v. Moore*, 5 Wheat. 34, 5 L. ed. 19.

³ *Wallach v. Van Renswick*, 92 U. S. 213, 23 L. ed. 473; *Pike v. Wassell*, 94 U. S. 714, 24 L. ed. 307; *New York Guaranty etc. Co. v. Tacoma Ry. etc. Co.*, 93 Fed. 56.

⁴ *Bigelow v. Forrest*, 9 Wall. 350, 19 L. ed. 692; *Day v. Micou*, 18 Wall. 160, 21 L. ed. 860; *Avegno v. Schmidt*, 113 U. S. 293, 5 S. Ct. 487, 28 L. ed. 976; *Shields v. Schiff*, 124 U. S. 356, 8 S. Ct. 510, 31 L. ed. 445.

⁵ *Day v. Micou*, 18 Wall. 156, 21 L. ed. 860; *Avegno v. Schmidt*, 113 U. S. 293, 5 S. Ct. 487, 28 L. ed. 976; *Shields v. Schiff*, 124 U. S. 359, 8 S. Ct. 510, 31 L. ed. 445; *Illinois Central R. R. Co. v. Bosworth*, 133 U. S. 101, 10 S. Ct. 231, 33 L. ed. 550.

⁶ *Miller v. United States*, 11 Wall. 305, 20 L. ed. 135.

⁷ *Armstrong's Foundry*, 6 Wall. 769, 18 L. ed. 882.

but a pardon cannot operate to divest the interest acquired by third persons during the lifetime of the person attainted.⁸

⁸ *Wallach v. Van Bickwick*, 92 U. S. 214, 23 L. ed. 473; *Semmes v. United States*, 91 U. S. 21, 23 L. ed. 193; *Knote v. United States*, 95 U. S. 149, 24 L. ed. 442; *Illinois Cent. R. R. Co. v. Bosworth*, 133 U. S. 103, 10 S. Ct. 231, 33 L. ed. 550.

ARTICLE IV.

STATE RIGHTS.

SECTION 1.

ACTS AND OFFICIAL RECORDS OF STATES, AUTHENTICATION
AND EFFECT OF.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Scope of Clause.

This clause declares the attributes and qualities which judicial proceedings and records of one state shall have when offered in evidence in the courts of another,¹ and it implies that they shall be given the same effect in the courts of another state as they have by law and usage at home.² But this provision, and the laws giving it effect, establish a rule of evidence, and not of jurisdiction;³ they do not operate to make records and judg-

¹ *McElmoyle v. Cohen*, 13 Pet. 324, 10 L. ed. 177; *Lynde v. Columbus etc. Ry. Co.*, 57 Fed. 996; *Alkire Grocery Co. v. Richesin*, 91 Fed. 83; *Lucas v. Copeland*, 2 Stew. 153; *Wyman v. Campbell*, 6 Port. 237, 31 Am. Dec. 686; *Bank of North America v. Wheeler*, 28 Conn. 439, 73 Am. Dec. 684; *Joice v. Scales*, 18 Ga. 725; *Tucker v. Harris*, 13 Ga. 10, 58 Am. Dec. 493; *Morris v. Burgess*, 116 N. C. 42, 21 S. E. 28; *Shelton v. Johnson*, 4 Sneed, 672, 70 Am. Dec. 265; *Sanborn v. Perry*, 86 Wis. 366, 56 N. W. 399.

² *Chicago etc. R. R. Co. v. Wiggins Ferry Co.*, 119 U. S. 622, 7 S. Ct. 398, 30 L. ed. 519.

³ *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 292, 8 S. Ct. 370, 32 L. ed. 239; *Huntington v. Attrill*, 146 U. S. 671, 13 S. Ct. 229, 36 L. ed. 1123; *Wood v. Augustins*, 70 Vt. 640, 41 Atl. 584.

ments domestic for all purposes, but only to give them a general validity and credit as evidence.⁴

This clause does not require courts to recognize as valid judgments of other states rendered without jurisdiction, or which are irresponsible to the complaint and rendered in the defendant's absence;⁵ it applies to records and proceedings of courts only so far as the courts have jurisdiction,⁶ and that jurisdiction may be the subject of inquiry whenever a foreign judgment is relied upon.⁷ And the record is always subject to contradiction as to facts necessary to give jurisdiction.⁸ So the record showing of service of process may be impeached,⁹ and constructive service may be shown to have been insufficient,¹⁰ and the recital of the death of a person, upon whose estate letters of administration have been granted, may be contradicted.¹¹ It may be shown that a defendant against whom a judgment was rendered was a nonresident, and that he was not served with process and did not voluntarily appear,¹² and the findings

⁴ *Cole v. Cunningham*, 133 U. S. 112, 10 S. Ct. 269, 33 L. ed. 533.

⁵ *Reynolds v. Stockton*, 140 U. S. 264, 11 S. Ct. 773, 35 L. ed. 464.

⁶ *Board of Public Works v. Columbia College*, 17 Wall. 528, 21 L. ed. 687; *Cole v. Cunningham*, 133 U. S. 112, 10 S. Ct. 269, 33 L. ed. 538.

⁷ *Thompson v. Whitman*, 18 Wall. 461, 21 L. ed. 897; *Simmons v. Saul*, 138 U. S. 448, 11 S. Ct. 369, 34 L. ed. 1054; *Thormann v. Frame*, 176 U. S. 356, 20 S. Ct. 446, 44 L. ed. 500.

⁸ *Thompson v. Whitman*, 18 Wall. 457, 21 L. ed. 897; *Owens v. Henry*, 161 U. S. 646, 16 S. Ct. 694, 40 L. ed. 837; *Cooper v. Newell*, 173 U. S. 566, 19 S. Ct. 510, 43 L. ed. 808; *Hood v. State*, 56 Ind. 263, 26 Am. Rep. 21; *Wilson v. Hawthorne*, 14 Colo. 533, 20 Am. St. Rep. 292, 24 Pac. 549; *Neff v. Beauchamp*, 74 Iowa, 94, 36 N. W. 906.

⁹ *Knowles v. Gaslight Co.*, 19 Wall. 61, 22 L. ed. 70; *Downs v. Allen*, 23 Blatchf. 59, 22 Fed. 808; *Rose v. Northwest Ins. Co.*, 67 Fed. 439; *Pennywit v. Foote*, 27 Ohio St. 600, 2 Am. Rep. 340; *Bowler v. Huston*, 30 Gratt. 275, 32 Am. Rep. 678.

¹⁰ *Pennoyer v. Neff*, 95 U. S. 730, 24 L. ed. 565, affirming 3 Saw. 301, Fed. Cas. No. 10,083.

¹¹ *Scott v. McNeal*, 154 U. S. 47, 14 S. Ct. 1113, 38 L. ed. 896.

¹² *D'Arcy v. Ketchum*, 11 How. 175, 13 L. ed. 647; *Grover etc. Co. v. Radcliffe*, 137 U. S. 295, 11 S. Ct. 94, 34 L. ed. 670; *Wilson v. Seligman*, 144 U. S. 45, 12 S. Ct. 542, 36 L. ed. 338; *Goldey v. Morning News*, 156 U. S. 521, 15 S. Ct. 560, 39 L. ed. 517.

as to residence are not conclusive in a collateral action.¹³ If a judgment is properly authenticated it proves itself when offered in the courts of another state.¹⁴

"Records" are all acts, legislative, executive, judicial and ministerial, which constitute the public records of a state.¹⁵ The object of the clause is to declare that full faith and credit shall be given to such, the manner of authenticating the same, and their effect when properly authenticated,¹⁶ and to prevent judgments from being disregarded in other states, when a proper tribunal having jurisdiction has rendered them.¹⁷ Legislative acts are to be authenticated by the seal of the state,¹⁸ which imports absolute verity.¹⁹ The constitution has effected no change in the nature of judgments;²⁰ it merely places judgments rendered in sister states in a different category from strictly foreign judgments, as to their force and effect.²¹ A judgment in any state is, as to that state, to be regarded as a domestic judgment.^{21a} The clause relates only to judgments in civil actions and not to judgments in criminal prosecutions.²² It does not embrace an alleged discrepancy between two decrees of a state court in the same case.²³

This clause relates only to the validity and force of judgments rendered in one state when proved in another;²⁴ it does

¹³ *Gregory v. Gregory*, 78 Me. 190, 57 Am. Rep. 793, 3 Atl. 281.

¹⁴ *Hanley v. Donoghue*, 116 U. S. 3, 6 S. Ct. 242, 29 L. ed. 535.

¹⁵ *White v. Burnley*, 20 How. 250, 15 L. ed. 886; *McGrew v. Watrous*, 16 Tex. 509; *Chase v. Caryl*, 57 N. J. L. 558, 31 Atl. 1029.

¹⁶ *Green v. Sarmiento*, 1 Pet. C. C. 74, 3 Wash. C. C. 17, Fed. Cas. No. 5760.

¹⁷ *People v. Dawell*, 25 Mich. 247, 12 Am. Rep. 260.

¹⁸ *United States v. Johns*, 4 Dall. 412, 1 Wash. C. C. 363, Fed. Cas. No. 15,481; *Craig v. Brown*, 1 Pet. C. C. 354, Fed. Cas. No. 3328.

¹⁹ *United States v. Johns*, 4 Dall. 416, 1 Wash. C. C. 363, Fed. Cas. No. 15,481; *United States v. Amedy*, 11 Wheat. 407, 6 L. ed. 502.

²⁰ *McElmoyle v. Cohen*, 13 Pet. 312, 10 L. ed. 177.

²¹ *Oldens v. Hallet*, 3 N. J. L. 466; *Gibbons v. Livingston*, 6 N. J. L. 236.

^{21a} *Baxley v. Dinah*, 27 Pa. St. 247.

²² *Commonwealth v. Green*, 17 Mass. 514.

²³ *Mitchell v. Lenox*, 14 Pet. 49, 10 L. ed. 349.

²⁴ *Claffin v. McDermott*, 12 Fed. 375.

not impose upon the states the duty to follow the decisions of the courts of another state construing the latter's statutes.²⁵ A state law providing that the records of its courts shall import absolute verity has no extraterritorial force;²⁶ nor can a statute exempting the state debt from taxation operate to exempt any portion of the debt held in another state from taxation by the latter.²⁷

— **Effect of Judgments Under this Provision.**

This clause, and the act of Congress declaring the effect of domestic judgments, do not require that they shall have any greater force and efficacy in other courts than in the courts of the states in which they are rendered, but only such faith and credit as, by law or usage, they have there.²⁸ It operates merely to give to a state judgment the same validity, credit and effect in every other state that it has in the state where it is rendered.²⁹ It does not give any validity to a void decree.³⁰

It is only when the jurisdiction is not impeached that a judgment is entitled to full faith and credit in another state.³¹

²⁵ *Wiggins Ferry Co. v. Chicago etc. Ry. Co.*, 3 McCrary, 609, 11 Fed. 381; *Miller v. Miller*, 18 Hun, 507.

²⁶ *Thompson v. Whitman*, 18 Wall. 468, 21 L. ed. 897.

²⁷ *Bonaparte v. Tax Court*, 104 U. S. 592, 26 L. ed. 845.

²⁸ *Robertson v. Pickrell*, 109 U. S. 611, 3 S. Ct. 407, 27 L. ed. 1049; *Frame v. Thurmann*, 102 Wis. 670, 79 N. W. 43.

²⁹ *Mills v. Duryee*, 7 Cr. 484, 3 L. ed. 411; *Hampton v. McConnell*, 3 Wheat. 235, 4 L. ed. 378; *Mayhew v. Thatcher*, 6 Wheat. 129, 5 L. ed. 223; *Caldwell v. Carrington*, 9 Pet. 101, 9 L. ed. 60; *Bank of Alabama v. Dalton*, 9 How. 522, 13 L. ed. 242; *Board of Public Works v. Columbia College*, 17 Wall. 529, 21 L. ed. 687; *Insurance Co. v. Harris*, 97 U. S. 336, 24 L. ed. 959; *Chicago etc. Ry. Co. v. Sturm*, 174 U. S. 718, 19 S. Ct. 797, 43 L. ed. 1144; *Hancock National Bank v. Farnum*, 176 U. S. 644, 20 S. Ct. 506, 44 L. ed. 619; *Burnham v. Webster*, 1 Wood. & M. 175, Fed. Cas. No. 2179; *Westerwelt v. Lewis*, 2 McLean, 511, Fed. Cas. No. 17,446; *Barnes v. Gibbs*, 31 N. J. L. 318, 86 Am. Dec. 210; *Kingman v. Paulson*, 126 Ind. 509, 22 Am. St. Rep. 613, 26 N. E. 393; *Suydam v. Barber*, 18 N. Y. 468.

³⁰ *Smith v. Wollfolk*, 119 U. S. 149, 5 S. Ct. 1177, 29 L. ed. 357; *Carpenter v. Strange*, 141 U. S. 106, 11 S. Ct. 960, 35 L. ed. 640.

³¹ *Thompson v. Whitman*, 18 Wall. 463, 21 L. ed. 897; *Colt v. Colt*, 111 U. S. 578, 4 S. Ct. 558, 28 L. ed. 520, affirming 19 Blatchf. 466,

Generally speaking, if a decree is enforceable in the state where it is rendered it is enforceable in any other state;³² but the courts of one state are not bound to uphold, on grounds of comity, a judgment of another state, invalid by its laws for want of jurisdiction, although it would be deemed valid where it was rendered.³³

The records and judicial proceedings to which full faith and credit are to be given are only such as are duly rendered by a competent court,³⁴ but without regard to whether they are superior courts of record or inferior tribunals.³⁵ A judgment recovered in one state does not carry with it into another state the efficacy of a judgment to be enforced simply by an execution; it is merely evidence in the latter state that the subject matter of the suit has become matter of record in the former, which cannot be avoided except by the plea of *nul tiel record*.³⁶ So a judgment of a sister state has the force of a judgment in a sister state only so far as to preclude inquiry into the merits of the controversy.³⁷ In an action on a judgment by confession rendered in another state the defendant may show want of authority in the attorney to confess.³⁸

48 Fed. 427; *L'Engle v. Gates*, 74 Fed. 514; *Peel v. January*, 35 Ark. 337, 37 Am. Rep. 31; *Newcomb v. Newcomb*, 13 Bush, 571, 26 Am. Rep. 236.

³² *Caldwell v. Carrington*, 9 Pet. 86, 9 L. ed. 60; *Glenn v. Williams*, 60 Md. 113.

³³ *Grover Machine Co. v. Radcliffe*, 137 U. S. 299, 11 S. Ct. 92, 34 L. ed. 670; *Rodgers v. Adriatic Ins. Co.*, 148 N. Y. 39, 42 N. E. 516.

³⁴ *Aldrich v. Kinney*, 4 Conn. 380, 10 Am. Dec. 151; *Bissell v. Briggs*, 9 Mass. 462, 6 Am. Dec. 88.

³⁵ *Taylor v. Barron*, 30 N. H. 78, 64 Am. Dec. 281; *Silver Lake Bank v. Harding*, 5 Ohio, 545; *Pelton v. Platner*, 13 Ohio, 209, 42 Am. Dec. 197.

³⁶ *McElmoyle v. Cohen*, 13 Pet. 325, 10 L. ed. 177; *Huntington v. Attrill*, 146 U. S. 685, 13 S. Ct. 234, 36 L. ed. 1123; *Claffin v. McDermott*, 20 Blatchf. 524, 12 Fed. 376; *Walser v. Seligman*, 21 Blatchf. 133, 13 Fed. 417.

³⁷ *McElmoyle v. Cohen*, 13 Pet. 326, 10 L. ed. 177; *Pennyoy v. Neff*, 95 U. S. 729, 24 L. ed. 565; *Simmons v. Saul*, 138 U. S. 459, 11 S. Ct. 376, 34 L. ed. 1054; *Glass v. Blackwell*, 48 Ark. 54, 2 S. W. 258; *Eaton v. Hasty*, 6 Neb. 426, 29 Am. Rep. 367; *Bowler v. Huston*, 80 Gratt. 274, 32 Am. Rep. 677.

³⁸ *First National Bank v. Cunningham*, 48 Fed. 514.

Where a statute of one state provides that service on the resident agent of a foreign corporation shall be effectual, a judgment recovered against a corporation of another state on such service is entitled to the same faith and credit in the latter as in the former.³⁹ So, also, a judgment against a director, individually, under a state statute is conclusive evidence of a direct liability between the parties, and is a debt of record upon which an action will lie in another state.⁴⁰ Full faith and credit is not denied to the judgment of another state by admitting evidence to show that a discontinuance was not intended as satisfaction but was pursuant to an agreement never fulfilled;⁴¹ nor is this provision violated by a finding in a suit on a judgment of a sister state rendered pursuant to an agreement that the agreement was not in controversy;⁴² but the refusal of a state court to enforce the decree of a court of a sister state by reason of an erroneous decision that the latter court was without jurisdiction is a violation of this clause.⁴³ Where in the original suit the question was as to whether the plaintiff had accepted a provision in a will, a decree in another suit in a sister state, between the same parties, which denies the binding force of the original decree is unconstitutional and void.⁴⁴ A judgment by confession is entitled to the same faith and credit as any other judgment.⁴⁵

The guaranty of faith and credit extends to judgments of courts in the District of Columbia,⁴⁶ and, under the act of 1790, state judgments are entitled to full faith and credit in the District of Columbia.⁴⁷

³⁹ *Lafayette Ins. Co. v. French*, 18 How. 406, 15 L. ed. 451.

⁴⁰ *Huntington v. Attrill*, 146 U. S. 686, 13 S. Ct. 224, 36 L. ed. 1123.

⁴¹ *Jacobs v. Marks*, 182 U. S. 595, 21 S. Ct. 865, 45 L. ed. 1241.

⁴² *Texas etc. Ry. Co. v. Southern Pacific Co.*, 137 U. S. 55, 11 S. Ct. 10, 34 L. ed. 614.

⁴³ *Laing v. Rigney*, 160 U. S. 539, 16 S. Ct. 366, 40 L. ed. 525.

⁴⁴ *Carpenter v. Strange*, 141 U. S. 104, 11 S. Ct. 960, 35 L. ed. 640.

⁴⁵ *Van Norman v. Gordon*, 172 Mass. 580, 70 Am. St. Rep. 307, 53 N. E. 268, 44 L. R. A. 840.

⁴⁶ *Savin v. Bond*, 57 Md. 28.

⁴⁷ *Mills v. Duryee*, 7 Cr. 485, 8 L. ed. 411.

— Power of Congress.

This provision does not confer upon Congress the power to give a judgment all the legal properties, rights and attributes to which it is entitled by the laws of the state where it is rendered;⁴⁸ nor does it guarantee that the effect and consequences of litigation in one state shall follow it into other states.⁴⁹ It does not have the effect of extending the local jurisdiction, or the operation of a local decree.⁵⁰

The probate of a will being, in effect, a decree in rem, cannot operate on property beyond the state wherein it is rendered,⁵¹ and a judgment as to the effect of a will rendered in the testator's domicile is not conclusive in another state where land devised is situated;⁵² and this is true of insolvency proceedings.⁵³ A discharge granted in one state will not bar a nonresident creditor,⁵⁴ and a discharge from imprisonment in one state cannot bar an arrest of the debtor in another state.⁵⁵ But the constitution does not forbid a court of equity in one state to enjoin a suit by one of its citizens in another; e. g., where, pending proceedings in insolvency, a citizen of the same

⁴⁸ *Brengle v. McClellan*, 7 Gill & J. 434.

⁴⁹ *Shelton v. Johnson*, 4 Sneed, 672, 70 Am. Dec. 265.

⁵⁰ *Pennoyer v. Neff*, 95 U. S. 727, 24 L. ed. 565; *Brown v. Campbell*, 100 Cal. 641, 38 Am. St. Rep. 317, 35 Pac. 434; *Bowen v. Johnson*, 5 R. I. 112, 73 Am. Dec. 49.

⁵¹ *Darby v. Mayer*, 10 Wheat. 469, 6 L. ed. 367; *Robertson v. Pickrell*, 109 U. S. 611, 3 S. Ct. 409, 27 L. ed. 1049; *Calloway v. Doe*, 1 Blackf. 372; *Sneed v. Ewing*, 5 J. J. Marsh. 466, 22 Am. Dec. 47; *Bullock v. Bullock*, 51 N. J. Eq. 446, 27 Atl. 436.

⁵² *Clarke v. Clarke*, 178 U. S. 195, 20 S. Ct. 873, 44 L. ed. 1028.

⁵³ *McElmoyle v. Cohen*, 13 Pet. 325, 10 L. ed. 177; *Ogden v. Saunders*, 12 Wheat. 363, 6 L. ed. 606; *Denny v. Bennett*, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491; *Newton v. Hagerman*, 10 Saw. 462, 22 Fed. 526.

⁵⁴ *Denny v. Bennett*, 128 U. S. 497, 9 S. Ct. 137, 32 L. ed. 491; *Felch v. Bugbee*, 48 Me. 13, 77 Am. Dec. 206; *Phelps v. Borland*, 103 N. Y. 410, 57 Am. Rep. 756, 9 N. E. 309; *Brengle v. McClellan*, 7 Gill & J. 434; *Cameron v. Wurtz*, 4 McCord, 278; *Colts' Estate*, 4 Watts & S. 314.

⁵⁵ *Woodhull v. Wagner*, Baldw. 298, Fed. Cas. No. 17,975; *Wood v. Malin*, 10 N. J. L. 210; *Joice v. Scales*, 19 Ga. 725.

state as the debtor endeavors by attachment to secure property in another state.⁵⁶

The authenticity of a judgment and its effect depend upon the law made pursuant to the constitution,⁵⁷ which declares that Congress may mark out the effect and define the general power given.⁵⁸ Under this clause Congress is vested with power to declare the judgments of one state conclusive in every other state; but Congress has never executed its power to this extent and has merely declared that such judgments shall have the same effect in other states as in the states where they were rendered.⁵⁹ Congress has provided that the judicial records of one state shall be proved by a certified copy, which, when duly authenticated, shall have, in the courts of every other state, the same faith and credit as it has in the state where rendered.⁶⁰ In order to have this effect, however, it must be authenticated as required by the act of Congress;⁶¹ but this does not preclude a state from requiring that, when offered in its own courts, a judgment shall require less proof than that prescribed by the act of Congress.⁶²

A state may give to the judgment of a sister state any effect it may deem proper, provided it does not deny to such judgment the effect guaranteed to it by the constitution and acts of Congress.⁶³ The legislature may fix different times for barring suit upon judgments of other states.⁶⁴

⁵⁶ *Cole v. Cunningham*, 133 U. S. 116, 10 S. Ct. 269, 33 L. ed. 538; *Allen v. Buchanan*, 97 Ala. 403, 38 Am. St. Rep. 191, 11 South. 779.

⁵⁷ *McElmoyle v. Cohen*, 13 Pet. 312, 10 L. ed. 177.

⁵⁸ *Curtis v. Gibbs*, 1 Pen. N. J. 435.

⁵⁹ *Mills v. Duryee*, 7 Cr. 484, 3 L. ed. 411; *Green v. Van Buskirk*, 7 Wall. 145, 19 L. ed. 109; *Caperton v. Ballard*, 14 Wall. 243, 20 L. ed. 885; *Robertson v. Pickrell*, 109 U. S. 611, 3 S. Ct. 409, 27 L. ed. 1049; *Warren Mfg. Co. v. Aetna Ins. Co.*, 2 Paine, 501, Fed. Cas. No. 17,206; *Green v. Sarmiento*, 3 Wash. C. C. 17, 1 Pet. C. C. 74, Fed. Cas. No. 5760.

⁶⁰ *Christmas v. Russell*, 5 Wall. 301, 18 L. ed. 475; *Green v. Van Buskirk*, 7 Wall. 145, 19 L. ed. 109.

⁶¹ *Caperton v. Ballard*, 14 Wall. 243, 20 L. ed. 885.

⁶² *Parke v. Williams*, 7 Cal. 247; *Whitwell v. Barbier*, 7 Cal. 54; *Wickersham v. Johnston*, 104 Cal. 414, 43 Am. St. Rep. 122, 38 Pac. 89.

⁶³ *Bissell v. Briggs*, 9 Mass. 462, 6 Am. Dec. 88.

⁶⁴ *McElmoyle v. Cohen*, 13 Pet. 312, 10 L. ed. 177; *Bacon v. Howard*, 13 How. 22, 15 L. ed. 811; *Robinson v. Peyton*, 4 Tex. 276.

SECTION 2.

PRIVILEGES AND IMMUNITIES OF STATE CITIZENS, ETC.

1. Entitled to same alike in every State.
2. Fugitives from justice.
3. Fugitives from servitude.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Who are Citizens.

The word "citizen," in its largest sense, means a native-born or naturalized person who is entitled to protection in the exercise and enjoyment of his private rights.¹ As used in the constitution it means a member of the nation owing allegiance thereto and entitled to protection therefrom.² Persons may be citizens, although they exercise no share of the political power and are incapacitated from holding particular offices.³

The term "citizen" is often used to convey the idea of membership in a nation, and in that sense a woman is a citizen when born within the jurisdiction of the United States,⁴ or when married to a citizen, regardless of the time of the marriage or of the husband's naturalization.⁵ All white persons

¹ Walsh v. Lallande, 25 La. Ann. 188.

² Minor v. Happersett, 21 Wall. 166, 22 L. ed. 627; United States v. Cruikshank, 92 U. S. 549, 23 L. ed. 588; Boyd v. Thayer, 143 U. S. 158, 12 S. Ct. 380, 36 L. ed. 103; Blair v. Silver Peak Mines, 93 Fed. 335.

³ Dred Scott v. Sandford, 19 How. 422, 15 L. ed. 691; Lyons v. Cunningham, 66 Cal. 42, 4 Pac. 938; Blanck v. Pausch, 113 Ill. 60; State v. Fairlamb, 121 Mo. 137, 25 S. W. 895.

⁴ Minor v. Happersett, 21 Wall. 166, 22 L. ed. 627; In re Lockwood, 154 U. S. 117, 14 S. Ct. 1082, 38 L. ed. 929.

⁵ Kelly v. Owen, 7 Wall. 498, 19 L. ed. 283; Ware v. Wisner, 4 McCrary, 69, 50 Fed. 312; Kreitz v. Behrensmeyer, 125 Ill. 197, 8 Am. St. Rep. 376, 17 N. E. 254.

who were born in the Colonies and adhered to the cause of independence up to July 4, 1776, were citizens.⁶

The nationality of the inhabitants of acquired territory changes with sovereignty; accordingly, when the United States acquires foreign territory by conquest or cession the inhabitants become United States citizens subject to their election.⁷ All free inhabitants of Texas at the time of annexation became citizens of the United States at their own election.⁸ So also the inhabitants of California after the treaty Guadalupe Hidalgo, who remained and adhered to the United States, are to be deemed citizens,⁹ and the treaty by which Florida was ceded to the United States operated to admit the inhabitants to the privileges and immunities of citizens of the United States, although they were not thereby admitted to all political rights.¹⁰

A citizen of the United States is a citizen of the state where he resides,¹¹ and the admission of a territory on an equal footing with the original states involves the adoption of its inhabitants as citizens of the United States.¹²

⁶ *Ware v. Hylton*, 3 Dall. 224, 1 L. ed. 568; *Inglis v. Sailors' Snug Harbor*, 3 Pet. 121, 7 L. ed. 617; *Dawson v. Godfrey*, 4 Cr. 321, 2 L. ed. 634; *Fairfax v. Hunter*, 7 Cr. 603, 3 L. ed. 453; *United States v. Ritchie*, 17 How. 538, 15 L. ed. 236; *Shanks v. Dupont*, 3 Pet. 245, 7 L. ed. 666; *Kelly v. Harrison*, 20 Johns. Cas. 29, 1 Am. Dec. 154.

⁷ *McKinney v. Saviego*, 18 How. 240, 15 L. ed. 365; *Boyd v. Nebraska*, 143 U. S. 162, 12 S. Ct. 375, 36 L. ed. 103; *Cryer v. Andrews*, 11 Tex. 105; *Tobin v. Wilkinshaw*, McAll. 186, Fed. Cas. No. 14,070; *People v. Naglee*, 1 Cal. 232, 52 Am. Dec. 312; *Quintana v. Tomkine*, 1 N. Mex. 29.

⁸ *Calkins v. Cocke*, 14 How. 227, 14 L. ed. 398; *Barrett v. Kelly*, 31 Tex. 476. But see *Coutzen v. United States*, 179 U. S. 195, 45 L. ed. 148, 21 S. Ct. 98.

⁹ *McKinney v. Saviego*, 18 How. 289, 15 L. ed. 365; *United States v. Ritchie*, 17 How. 538, 15 L. ed. 236; *Tobin v. Wilkinshaw*, McAll. 186, Fed. Cas. No. 14,070; *People v. De La Guerra*, 40 Cal. 311.

¹⁰ *American Ins. Co. v. Cotton*, 1 Pet. 582, 7 L. ed. 242; *United States v. Gratiot*, 14 Pet. 526, 10 L. ed. 573; *Cross v. Harrison*, 16 How. 189, 14 L. ed. 889.

¹¹ *Gassies v. Ballou*, 6 Pet. 762, 8 L. ed. 573; *Marks v. Marks*, 75 Fed. 328; *Easterly v. Goodwin*, 35 Conn. 286, 95 Am. Dec. 239.

¹² *Boyd v. Thayer*, 143 U. S. 170, 12 S. Ct. 375, 36 L. ed. 103.

The term is of the same import as the word "freeman," and includes every person who, by birth or naturalization, is or may be qualified to enjoy all the rights which a native-born inhabitant does or can enjoy.¹³ Prior to the Fourteenth Amendment, however, it did not include free negroes and mulattoes.¹⁴ This amendment not only conferred on persons of color the privileges and immunities of citizenship, but prohibited the states from denying to them the equal protection of the laws.¹⁵ The Indian tribes are separate political communities, and a member of such a tribe is not a citizen, although born within the limits of the United States.¹⁶ He may become a citizen by voluntarily separating himself from his tribe and indicating an intention to sever the tribal relations.¹⁷ But mere separation from his tribe is insufficient; there must be some recognition of his status as a citizen by the United States or a state.¹⁸

Birth and allegiance go together except in the case of the child of an ambassador or public minister.¹⁹ So a child born of Chinese parents domiciled in the United States, carrying on business here, and not employed in any diplomatic or official capacity by the Chinese Government, is a citizen of the United States.²⁰

¹³ *Slaughter-house Cases*, 16 Wall. 129, 21 L. ed. 394; *Douglass v. Stephens*, 1 Del. Ch. 465.

¹⁴ *Dred Scott v. Sandford*, 19 How. 404, 15 L. ed. 691; *Donovan v. Pitcher*, 53 Ala. 415, 25 Am. Rep. 636; *Pendleton v. State*, 6 Ark. 509; *Clark v. Gautier*, 8 Fla. 362.

¹⁵ *Strauder v. West Virginia*, 100 U. S. 303, 25 L. ed. 664.

¹⁶ *McKay v. Campbell*, 2 Saw. 118, Fed. Cas. No. 8840; *In re Sah Quah*, 31 Fed. 327.

¹⁷ *Elk v. Wilkins*, 112 U. S. 103, 5 S. Ct. 41, 28 L. ed. 643; *Smith v. United States*, 151 U. S. 56, 14 S. Ct. 234, 38 L. ed. 67.

¹⁸ *Elk v. Wilkins*, 112 U. S. 103, 5 S. Ct. 41, 28 L. ed. 643; *United States v. Osborn*, 6 Saw. 406, 2 Fed. 58; *Paul v. Chilsquoie*, 70 Fed. 402.

¹⁹ *Inglis v. Sailors' Snug Harbor*, 3 Pet. 99, 7 L. ed. 617; *Slaughter-house Cases*, 16 Wall. 73, 21 L. ed. 394; *Geofroy v. Biggs*, 133 U. S. 264, 10 S. Ct. 295, 33 L. ed. 642; *United States v. Rhodes*, 1 Abb. U. S. 40, Fed. Cas. No. 16,151.

²⁰ *United States v. Wong Kim Ark*, 169 U. S. 653, 18 S. Ct. 456, 42 L. ed. 890.

The term applies only to natural persons, members of the body politic owing allegiance to the state, and not to corporations.^{20*}

— Privileges and Immunities Guaranteed.*

The privileges and immunities here referred to are those which are fundamental: protection by the government and the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject to governmental restraints exerted for the general good.²¹ In construing this constitutional guaranty the meaning of the word "privileges" must be determined in each case upon a view of the particular rights asserted and denied therein.²² This clause did not operate to create any new rights, but merely guaranteed the same measure of rights.²³ Nor did it make the privileges and im-

^{20*} *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 573, 19 L. ed. 1029; *Philadelphia etc. Assn. v. New York*, 119 U. S. 117, 7 S. Ct. 112, 30 L. ed. 342; affirming 92 N. Y. 325, 44 Am. Rep. 388; *Blake v. McClung*, 172 U. S. 259, 19 S. Ct. 165, 43 L. ed. 432; *Orient Ins. Co. v. Daggs*, 172 U. S. 561, 19 S. Ct. 281, 43 L. ed. 552; *Lake Shore etc. Ry. Co. v. Smith*, 173 U. S. 690, 19 S. Ct. 565, 43 L. ed. 858; *Warren Mfg. Co. v. Aetna Ins. Co.*, 2 Paine, 502, Fed. Cas. No. 17,206; *Insurance Co. v. New Orleans*, 1 Woods, 85, Fed. Cas. No. 7052; *American Union Tel. Co. v. Western Union Tel. Co.*, 67 Ala. 26, 42 Am. Rep. 90; *Baltimore & Ohio Tel. Co. v. Delaware etc. Co.* 7 Houst. 269, 31 Atl. 714; *Phoenix Ins. Co. v. Commonwealth*, 5 Bush, 68, 96 Am. Dec. 331; *Commonwealth v. Milton*, 12 B. Mon. 242, 54 Am. Dec. 522.

²¹ *Slaughter-house Cases*, 16 Wall. 76, 97, 117, 21 L. ed. 394; *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449; *Corfield v. Coryell*, 4 Wash. C. C. 371, Fed. Cas. No. 3230; *Bennett v. Boggs*, Baldw. 60, Fed. Cas. No. 1319; *People v. Loeffler*, 175 Ill. 609, 51 N. E. 793; *Burdick v. People*, 149 Ill. 611, 41 Am. St. Rep. 337, 36 N. E. 951, 24 L. R. A. 152; *Ritchie v. People*, 155 Ill. 112, 46 Am. St. Rep. 325, 40 N. E. 458, 29 L. R. A. 79; *Cummings v. Wingo*, 31 S. C. 435, 10 S. E. 110; *State v. Scougal*, 3 S. Dak. 70, 44 Am. St. Rep. 767, 51 N. W. 863, 15 L. R. A. 477; *Commonwealth v. Milton*, 12 B. Mon. 212, 54 Am. Dec. 522.

²² *Conner v. Elliott*, 18 How. 593, 15 L. ed. 497; *Cory v. Carter*, 48 Ind. 345, 17 Am. Rep. 745; *Buffington v. Grosvenor*, 46 Kan. 738, 27 Pac. 140, 13 L. R. A. 282; *Cofrode v. Circuit Judge*, 79 Mich. 342, 44 N. W. 626, 7 L. R. A. 511; *Chambers v. Church*, 14 R. I. 400, 51 Am. Rep. 411; *Cummings v. Wingo*, 31 S. C. 435, 10 S. E. 110.

²³ *Slaughter-house Cases*, 16 Wall. 77, 21 L. ed. 394.

*See p. 702 et seq., for privileges of United States citizenship.

munities enjoyed by the citizens of one state under its constitution and laws the measure of those to be enjoyed, as of right, by a citizen of another state under its laws.²⁴ It forbids only such legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when in another state, or when asserting in another state rights that commonly appertain to United States citizenship.²⁵

The privileges and immunities guaranteed are such as belong to general citizenship;²⁶ they are those which are common to the citizens of the several states, and do not embrace special privileges;²⁷ nor privileges granted by the local laws of a state;²⁸ e. g., the rights of representation and election.²⁹ A law dispensing with security for costs as to residents;³⁰ a law granting more liberal dower rights to residents than to nonresidents;³¹ or a law granting a right peculiar to some individual or body.³² A citizen of one state is entitled to no greater privileges or immunities in another state than the citizens of that state.³³ Nor does this clause give to laws of one state any operation in other states;³⁴ it merely provides that no privilege allowed to the most favored class shall be withheld from citizens of another state.³⁵

The right to institute actions is one of the privileges of the

²⁴ *McKane v. Durston*, 153 U. S. 687, 14 S. Ct. 913, 38 L. ed. 867.

²⁵ *Blake v. McClung*, 172 U. S. 256, 19 S. Ct. 165.

²⁶ *Dred Scott v. Sandford*, 19 How. 580, 15 L. ed. 691.

²⁷ *Paul v. Virginia*, 8 Wall. 180, 19 L. ed. 357.

²⁸ *Conner v. Elliott*, 18 How. 593, 15 L. ed. 497; *Live Stock etc. Assn. v. Crescent City etc. Co.*, 1 Abb. U. S. 397; *Slaughter-house Cases*, 16 Wall. 36, 21 L. ed. 394.

²⁹ *Dred Scott v. Sandford*, 19 How. 580, 15 L. ed. 691; *Murray v. McCarty*, 2 Munf. 393; *Allen v. Sarah*, 2 Harr. 434; *Smith v. Moody*, 26 Ind. 299; *Campbell v. Morris*, 3 Har. & McH. 535.

³⁰ *Cummings v. Wingo*, 31 S. C. 435, 10 S. E. 110.

³¹ *Bennett v. Harms*, 51 Wis. 259, 8 N. W. 225.

³² *Ex parte Coupland*, 26 Tex. 420.

³³ *Detroit v. Osborne*, 135 U. S. 498, 10 S. Ct. 1012, 34 L. ed. 260.

³⁴ *Paul v. Virginia*, 8 Wall. 180, 19 L. ed. 357.

³⁵ *Tennessee v. Claiborne*, 1 Meigs, 831.

citizens of each state,^{35a} and a resident of one state may attach the property of his debtor in another,³⁶ subject, however, to limitations imposed by the *lex fori*;³⁷ and a citizen of one state may sue a foreigner in another state.³⁸ But it is not a privilege or immunity contemplated by this clause to have a controversy determined by one form of action instead of by another;³⁹ a state has full control over the procedure of its courts, both in civil and criminal cases, subject only to the restriction that it shall not deny fundamental rights or violate the national constitution.⁴⁰ So an act which distinguishes between residents and nonresidents as to the manner of bringing suits is valid.⁴¹

As regards taxation the citizens of one state are entitled to all the privileges and immunities of citizens of another, and where a tax cannot be enforced against a resident it cannot be enforced against a nonresident,⁴² and a state license tax discriminating against nonresidents is void.⁴³

The "privileges and immunities" guaranteed include the right of a citizen of one state to pass unmolested into another for lawful commerce, to acquire and hold property, to maintain actions and to be exempt from higher taxes than are imposed by a state on its own citizens.⁴⁴ A right attaching to a contract

^{35a} *Davis v. Pierse*, 7 Minn. 13, 82 Am. Dec. 65; *McFarland v. Butler*, 8 Minn. 116; *Jackson v. Butler*, 8 Minn. 117; *Morgan v. Neville*, 74 Pa. St. 52; *Reynolds v. Geary*, 26 Conn. 183.

³⁶ *Morgan v. Neville*, 74 Pa. St. 52.

³⁷ *Kincaid v. Francis*, Cooke, 49; *Campbell v. Morris*, 3 Har. & McH. 535.

³⁸ *Barrett v. Benjamin*, 15 Mass. 354.

³⁹ *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 393, 16 S. Ct. 344, 40 L. ed. 467.

⁴⁰ *Maxwell v. Dow*, 176 U. S. 604, 20 S. Ct. 448, 44 L. ed. 597.

⁴¹ *Robinson v. Oceanic Steam Nav. Co.*, 112 N. Y. 315, 19 N. E. 625, 2 L. R. A. 636; *Central B. R. etc. Co. v. Georgia Const. etc. Co.*, 32 S. C. 319, 11 S. E. 192; *Kincaid v. Francis*, 3 Tenn. 49; *Paducah Hotel Co. v. Long*, 92 Ky. 278, 17 S. W. 853.

⁴² *Union National Bank v. Chicago*, 3 Biss. 82, Fed. Cas. No. 14,374; *Campbell v. Morris*, 3 Har. & McH. 535.

⁴³ *Ward v. Maryland*, 12 Wall. 429, 20 L. ed. 449; *Ex parte Thornton*, 4 Hughes, 230, 12 Fed. 546; *Gould v. Mayor*, 55 Ga. 685.

⁴⁴ *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449; *Guy v. Baltimore*, 100 U. S. 439, 25 L. ed. 743; *In re Watson*, 15 Fed. 512; *Far-*

of marriage, wholly irrespective of the citizenship of the parties, cannot be deemed a privilege of citizenship.⁴⁵ Nor does this clause invest citizens of one state with any interest in the common property of citizens of another state; e. g., the right to fish or to plant oysters.⁴⁶

Congress cannot grant privileges to citizens of one state over those of another, and cannot empower a state to do so.⁴⁷

— Extent of Restriction on the States.

The object of this clause was to prevent such legislation on the part of a state as would place a citizen of another state substantially in a condition of alienage when within the former's borders;⁴⁸ in other words, to prevent each state from discriminating in favor of its own citizens as against those of other states.⁴⁹ Citizens of one state do not, by this clause, acquire any peculiar privileges in another state except upon the conditions on which they may be held or enjoyed by the citizens of such other state,⁵⁰ and where the laws differ, a citizen of one state claiming rights in another must claim according to the laws of the latter;⁵¹ this clause does not give the laws of his state any operation beyond its own borders.⁵²

The guaranty does not exempt the citizens of other states from any conditions which the laws of a state may impose upon

mers' Loan etc. Co. v. Chicago etc. R. R. Co., 27 Fed. 149; Mercantile Bank v. Shields, 59 Fed. 956; Crandall v. Nevada, 6 Wall. 35, 18 L. ed. 745; Sprague v. Fletcher, 69 Vt. 78, 37 Atl. 242, 37 L. R. A. 840; Eingartner v. Illinois Steel Co., 94 Wis. 76, 59 Am. St. Rep. 861, 68 N. W. 606, 34 L. R. A. 503; Ex parte Archy, 9 Cal. 147; Julia v. McKinney, 3 Mo. 270; State v. Medbury, 3 B. I. 142.

⁴⁵ Conner v. Elliott, 18 How. 593, 15 L. ed. 497.

⁴⁶ McCready v. Virginia, 94 U. S. 395, 24 L. ed. 248.

⁴⁷ Chapman v. Miller, 2 Spear, 769.

⁴⁸ Blake v. McClung, 172 U. S. 256, 19 S. Ct. 165, 43 L. ed. 482.

⁴⁹ Davis v. Pierse, 7 Minn. 13, 82 Am. Dec. 65.

⁵⁰ Paul v. Virginia, 8 Wall. 180, 19 L. ed. 357; Philadelphia Fire Assn. v. New York, 119 U. S. 117, 7 S. Ct. 112, 30 L. ed. 342; Reynolds v. Grary, 26 Conn. 179; Commonwealth v. Milton, 12 B. Mon. 212, 54 Am. Dec. 522; Lemmon v. People, 5 Sand. 681, 20 N. Y. 562.

⁵¹ Lemmon v. People, 5 Sand. 681, 20 N. Y. 562.

⁵² Paul v. Virginia, 8 Wall. 180, 19 L. ed. 357.

its own citizens,⁵³ nor does it interfere with the local policy of the state governments as to their citizens.⁵⁴ Its object is to prevent discriminations by one state against the citizens of others;⁵⁵ but it is not intended to secure the citizens of any state against discriminations by their own state in favor of the citizens of other states, nor of one class of citizens against another class in the same state;⁵⁶ nor to make the privileges and immunities enjoyed under the laws of one state the measure of those to be enjoyed, as of right, in another state.⁵⁷ So a state may provide that while a debtor is out of its jurisdiction the statute of limitations shall not run as against a resident creditor, but shall as to a nonresident creditor.⁵⁸

A state cannot impose a discriminating tax upon nonresident traders,⁵⁹ nor pass a law providing for a license and denying it to nonresidents,⁶⁰ but a license tax on nonresident traders which applies alike to residents is not repugnant to this clause.⁶¹

⁵³ *Paul v. Virginia*, 8 Wall. 180, 19 L. ed. 357; *Commonwealth v. Milton*, 12 B. Mon. 212, 54 Am. Dec. 522; *Jackson v. Bullock*, 12 Conn. 38.

⁵⁴ *Kincaid v. Francis, Cooke*, 49.

⁵⁵ *Paul v. Virginia*, 8 Wall. 188, 19 L. ed. 357; *Ward v. Maryland*, 12 Wall. 418, 20 L. ed. 449; *Williams v. Bruffy*, 96 U. S. 183, 24 L. ed. 716; *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290; *Corfield v. Coryell*, 4 Wash. C. C. 371, Fed. Cas. No. 3230.

⁵⁶ *Bradwell v. State*, 16 Wall. 138, 21 L. ed. 442; *Commonwealth v. Griffin*, 3 B. Mon. 208.

⁵⁷ *McKane v. Durston*, 153 U. S. 687, 14 S. Ct. 913, 38 L. ed. 867.

⁵⁸ *Chemung Bank v. Lowery*, 93 U. S. 76, 23 L. ed. 806; *Robinson v. Oceanic Steam Nav. Co.*, 112 N. Y. 325, 19 N. E. 627, 2 L. R. A. 636.

⁵⁹ *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449; *Osborne v. Mobile*, 16 Wall. 482, 21 L. ed. 470; *Wiley v. Parmer*, 14 Ala. 627; *Welton v. Missouri*, 55 Mo. 288; *Daniel v. Richmond*, 78 Ky. 542; *Rash v. Halloway*, 82 Ky. 674; *Ex parte Bliss*, 63 N. H. 135; *State v. Lancaster*, 63 N. H. 267. But see *People v. Coleman*, 4 Cal. 46, 60 Am. Dec. 581.

⁶⁰ *In re Watson*, 15 Fed. 511.

⁶¹ *Woodruff v. Parham*, 8 Wall. 140, 19 L. ed. 382; *Hinson v. Lott*, 8 Wall. 148, 19 L. ed. 387; *State v. Wheelock*, 95 Iowa, 538, 58 Am. St. Rep. 444, 64 N. W. 621, 30 L. R. A. 429; *State v. Emert*, 103 Mo. 245, 23 Am. St. Rep. 877, 15 S. W. 82, 11 L. R. A. 219; *State v. Richards*, 32 W. Va. 353, 9 S. E. 247, 3 L. R. A. 705.

and the property of a nonresident is subject to the same tax as that of a resident.⁶²

The guaranty of this clause does not apply to corporations,⁶³ and so does not restrict a state in the regulation of the business of foreign corporations within its borders.⁶⁴ A state may impose any restrictions it sees fit upon the right of a foreign corporation to do business,⁶⁵ and in so doing may discriminate

⁶² *Duer v. Small*, 4 Blatchf. 263, Fed. Cas. No. 4116; *Redd v. St. Francis County*, 17 Ark. 416; *Battle v. Mobile*, 9 Ala. 234, 44 Am. Dec. 438.

⁶³ *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 573, 19 L. ed. 1029; *Philadelphia etc. Assn. v. New York*, 119 U. S. 117, 7 S. Ct. 112, 30 L. ed. 342, affirming 92 N. Y. 325, 44 Am. Rep. 388; *Blake v. McClung*, 172 U. S. 259, 19 S. Ct. 165, 43 L. ed. 432; *Orient Ins. Co. v. Daggs*, 172 U. S. 561, 19 S. Ct. 281, 43 L. ed. 552; *Lake Shore etc. Ry. Co. v. Smith*, 173 U. S. 690, 19 S. Ct. 565, 43 L. ed. 858; *State v. Phipps*, 50 Kan. 618, 34 Am. St. Rep. 158, 31 Pac. 1099, 18 L. R. A. 657; *Hartford Fire Ins. Co. v. Raymond*, 70 Mich. 502, 38 N. W. 482; *State v. Stone*, 118 Mo. 403, 40 Am. St. Rep. 395, 24 S. W. 167, 25 L. R. A. 243; *Stanhilber v. Mutual Mill Ins. Co.*, 76 Wis. 291, 45 N. W. 223.

⁶⁴ *Paul v. Virginia*, 8 Wall. 177, 19 L. ed. 357; *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 567, 19 L. ed. 1029; *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 187, 8 S. Ct. 737, 31 L. ed. 650; *Blake v. McClung*, 172 U. S. 259, 19 S. Ct. 165, 43 L. ed. 432; *Cincinnati etc. Assur. Co. v. Rosenthal*, 55 Ill. 90, 8 Am. Rep. 628; *List v. Commonwealth*, 118 Pa. St. 327, 12 Atl. 279.

⁶⁵ *Bank of Augusta v. Earle*, 13 Pet. 591, 10 L. ed. 274; *Lafayette Ins. Co. v. French*, 18 How. 407, 15 L. ed. 451; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Insurance Co. v. Morse*, 20 Wall. 458, 22 L. ed. 365; *Doyle v. Continental Ins. Co.*, 94 U. S. 540, 24 L. ed. 148; *Cowell v. Springs Co.*, 100 U. S. 60, 25 L. ed. 547; *St. Clair v. Cox*, 106 U. S. 356, 1 S. Ct. 354, 27 L. ed. 222; *Fritts v. Palmer*, 132 U. S. 288, 10 S. Ct. 93, 33 L. ed. 317; *Horn Silver Mining Co. v. New York*, 143 U. S. 314, 12 S. Ct. 403, 36 L. ed. 164; *Hooper v. California*, 155 U. S. 656, 15 S. Ct. 207, 39 L. ed. 297; *Allgeyer v. Louisiana*, 165 U. S. 583, 17 S. Ct. 427, 41 L. ed. 832; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 45, 20 S. Ct. 518, 44 L. ed. 657; *Williams v. Gaylord*, 186 U. S. 168, 21 S. Ct. 926, 46 L. ed. 1102; *Hartford Ins. Co. v. Raymond*, 70 Mich. 502, 38 N. W. 482; *Daggs v. Insurance Co.*, 136 Mo. 391, 58 Am. St. Rep. 641, 38 S. W. 86, 35 L. R. A. 227; *Ex parte Robinson*, 12 Nev. 263, 28 Am. Rep. 794; *Huffman v. Western Mortgage etc. Co.*, 13 Tex. Civ. App. 170, 36 S. W. 306.

against such corporations in favor of its own corporations, subject only to the limitations upon its sovereignty prescribed in other provisions of the constitution.⁶⁶ This discrimination may take the form of a higher rate of taxation.⁶⁷

⁶⁶ *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Philadelphia etc. Association v. New York*, 119 U. S. 118, 7 S. Ct. 112, 30 L. ed. 342; *Barron v. Burnside*, 121 U. S. 200, 7 S. Ct. 931, 30 L. ed. 915; *Southern Pacific Co. v. Denton*, 146 U. S. 207, 13 S. Ct. 44, 36 L. ed. 942; *New York etc. R. R. Co. v. Pennsylvania*, 153 U. S. 655, 14 S. Ct. 952, 38 L. ed. 846; *Crutcher v. Kentucky*, 141 U. S. 59, 11 S. Ct. 854, 35 L. ed. 649; *Stockton v. Baltimore etc. R. R. Co.*, 32 Fed. 13; *Osborne v. State*, 33 Fla. 179, 39 Am. St. Rep. 110, 14 South. 588, 25 L. R. A. 120; *McNaughton v. McGirl*, 20 Mont. 124, 63 Am. St. Rep. 612, 49 Pac. 652, 38 L. R. A. 367.

⁶⁷ *Paul v. Virginia*, 8 Wall. 178, 19 L. ed. 357; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972, affirming 48 Ill. 177, 95 Am. Dec. 533; *Philadelphia Fire Assn. v. New York*, 119 U. S. 118, 7 S. Ct. 112, 30 L. ed. 342, affirming 92 N. Y. 325, 44 Am. Rep. 388; *Horn Silver Mining Co. v. New York*, 143 U. S. 314, 12 S. Ct. 404, 36 L. ed. 164; *Insurance Co. v. New Orleans*, 1 Woods, 87, Fed. Cas. No. 7052; *State ex rel. v. Insurance Co. of North America*, 115 Ind. 265, 17 N. E. 578; *Insurance Co. of North America v. Commonwealth*, 87 Pa. St. 182, 30 Am. Rep. 364.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitives from Justice.

A fugitive from justice is one who, having committed a crime in one jurisdiction, goes into another to escape punishment,¹ or who conscious of being liable to prosecution leaves the state, or if admitted to bail forfeits the same and again flees.² One who commits a crime in another state and afterward returns to his own state is a fugitive within this clause.³ A person who commits a crime in one state, for which he is indicted, and is found in another, is to be regarded as a fugitive from justice.⁴ But in order to constitute one a "fugitive" it is not necessary that he should have fled after indictment found, or to avoid prosecution, but simply that he has committed a crime and has left the state's jurisdiction.⁵

The words "fugitive from justice" must not be taken in a literal sense, but with reference to the subject matter involved, considering the general object of the federal constitution and laws.⁶ So departure from the jurisdiction after the commission of an act in furtherance of a crime subsequently consummated is flight rendering the fugitive subject to extradition.⁷ But one

¹ Voorhees' Case, 32 N. J. L. 147; State v. Hall, 115 N. C. 811, 44 Am. St. Rep. 501, 20 S. E. 729, 28 L. ed. 289.

² Ex parte Greenough, 31 Vt. 279.

³ Ex parte Swearingen, 13 S. C. 74.

⁴ Hibler v. State, 43 Tex. 201.

⁵ Roberts v. Reilly, 116 U. S. 97, 6 S. Ct. 291, 29 L. ed. 544; Streep v. United States, 160 U. S. 134, 16 S. Ct. 247, 40 L. ed. 365; Ex parte Brown, 28 Fed. 654; In re Cook, 48 Fed. 843; State v. Richter, 37 Minn. 438, 35 N. W. 9; In re Sultan, 115 N. C. 61, 44 Am. St. Rep. 436, 20 S. E. 377, 28 L. R. A. 294.

⁶ Hibler v. State, 43 Tex. 201.

⁷ In re Sultan, 115 N. C. 57, 44 Am. St. Rep. 433, 20 S. E. 377, 28 L. R. A. 294.

who comes into a state for one day on business, eight days after the commission of an alleged crime and several months before he is indicted, does not by his departure from the state become "a fugitive from justice."⁸

The question whether the person demanded is a fugitive from justice is one of fact for the governor.⁹ The governor cannot be compelled to act upon a warrant,¹⁰ and his action in issuing or refusing to issue a warrant of extradition is not reviewable by the courts.¹¹ To justify the removal of the person demanded, it should appear from recitals in the warrant that he is a fugitive from justice of the demanding state;¹² but whether the warrant recites the fact or not it will be deemed sufficient until the presumption in its favor is overthrown.¹³ This clause does not prohibit provisions in state laws for inquiry into the question of fact whether the person demanded is a fugitive from justice.¹⁴

One cannot be a fugitive from the justice of a state in which he was only constructively present at the time he committed the crime;¹⁵ the provision applies only to those actually in the state at the time of the commission of the act complained of.¹⁶ A state may, however, in the exercise of its sovereign powers and as an act of comity, provide for the surrender of persons indictable for a crime committed through their constructive presence in another state, although they were never actually within the latter state and never fled from it.¹⁷

⁸ *Hyatt v. New York*, 188 U. S. 691, 23 S. Ct. 456, 47 L. ed. 657.

⁹ *In re Tod*, 12 S. Dak. 386, 76 Am. St. Rep. 616, 81 N. W. 637, 47 L. R. A. 566.

¹⁰ *Taylor v. Taintor*, 16 Wall. 370.

¹¹ *In re Sultan*, 115 N. C. 57, 44 Am. St. Rep. 433, 20 S. E. 377, 23 L. R. A. 294.

¹² *In re Tod*, 12 S. Dak. 386, 76 Am. St. Rep. 616, 81 N. W. 637, 47 L. R. A. 566.

¹³ *Roberts v. Reilly*, 116 U. S. 95, 6 S. Ct. 291, 29 L. ed. 544.

¹⁴ *Hartman v. Aveline*, 63 Ind. 344, 30 Am. Rep. 217.

¹⁵ *State v. Hall*, 115 N. C. 811, 44 Am. St. Rep. 501, 20 S. E. 729, 28 L. R. A. 289.

¹⁶ *Wilcox v. Nolze*, 34 Ohio St. 520.

¹⁷ *State v. Hall*, 115 N. C. 811, 44 Am. St. Rep. 501, 20 S. E. 729, 28 L. R. A. 289.

— Crimes Embraced by the Clause.

The words "treason, felony, or other crime" embrace every act forbidden and made punishable by the laws of the state where the act was committed.¹⁸ The word "crime" includes every species of indictable offense,¹⁹ and even an act which was not criminal at the time of the adoption of the constitution, but which was made so by subsequent legislation.²⁰ Nor is it necessary that the crime charged be an offense in the state requested to surrender a person accused,²¹ nor that it be an offense at common law.²² It is enough that it is a crime against the laws of the demanding state,²³ and whether the act charged be a crime is to be determined according to the law of the demanding state.²⁴ The term includes any act punishable by the law of the state from which the accused has fled,²⁵ and the word "crime" extends to misdemeanors, as well as treason or felony.²⁶

¹⁸ *Kentucky v. Dennison*, 24 How. 99, 16 L. ed. 717; *Ex parte Reggel*, 114 U. S. 650, 5 S. Ct. 1152, 29 L. ed. 250; *Lascelles v. Georgia*, 148 U. S. 542, 13 S. Ct. 689, 37 L. ed. 549, affirming 90 Ga. 366, 35 Am. St. Rep. 222, 16 S. E. 947; *Commonwealth v. Wright*, 158 Mass. 155, 35 Am. St. Rep. 480, 33 N. E. 54, 19 L. R. A. 206; *Brown's Case*, 112 Mass. 411, 17 Am. Rep. 116; *In re Voorhees*, 32 N. J. L. 149; *People v. Donohue*, 84 N. Y. 441; *In re Hooper*, 52 Wis. 702, 58 N. W. 741.

¹⁹ *In re Voorhees*, 32 N. J. L. 149.

²⁰ *In re Voorhees*, 32 N. J. L. 149; *People v. Brady*, 56 N. Y. 182; *Ex parte Hughes*, Phill. (N. C.) 57.

²¹ *Lascelles v. State*, 90 Ga. 366, 35 Am. St. Rep. 222, 16 S. E. 947.

²² *In re Fetter*, 3 Zab. 311, 57 Am. Dec. 382.

²³ *Lascelles v. Georgia*, 148 U. S. 542, 13 S. Ct. 689, 37 L. ed. 549; *Commonwealth v. Wright*, 158 Mass. 155, 35 Am. St. Rep. 480, 33 N. E. 84, 19 L. R. A. 206; *Johnson v. Riley*, 13 Ga. 97; *In re Clark*, 9 Wend. 221; *Commonwealth v. Daniels*, 6 Pa. L. J. 428; *Brown's Case*, 112 Mass. 411, 17 Am. Rep. 116; *People v. Donohue*, 84 N. Y. 441.

²⁴ *Kentucky v. Dennison*, 24 How. 107, 6 L. ed. 717; *Johnson v. Riley*, 13 Ga. 133. But see *Ex parte Spears*, 88 Cal. 643, 22 Am. St. Rep. 344, 26 Pac. 609.

²⁵ *Kentucky v. Dennison*, 24 How. 99, 16 L. ed. 717.

²⁶ *Ex parte Reggel*, 114 U. S. 650, 5 S. Ct. 1152, 29 L. ed. 250; *Brown's Case*, 112 Mass. 411, 17 Am. Rep. 116; *Barranger v. Baum*, 103 Ga. 475, 68 Am. St. Rep. 522, 30 S. E. 528.

Not only is it true that a fugitive may be held and tried in the demanding state for a crime other than that charged in the warrant of extradition if the criminal act for which he was extradited and that for which he was indicted is the same,²⁷ but it is now the rule that a prisoner lawfully brought within the state for trial for one offense may be charged with and tried for another,²⁸ the rule that a person can be tried only for the offense for which he is extradited applying only to persons surrendered by a foreign government.²⁹

— Demand for Surrender.

A demand on the governor of a state for a fugitive must show (1) that the person is substantially charged with a crime against the laws of the demanding state by indictment or affidavit, certified by the governor as authentic, and (2) that he is a fugitive from such state.³⁰ The executive authority of a state is not authorized to make a demand unless the party is charged in the regular course of judicial proceedings,³¹ but a state has power to establish the forms of proceedings in its own courts, subject only to the restrictions of the federal constitution, and in extradition proceedings it may not be objected that the indictment is not technically correct, if it is substantially according to the laws of the demanding state.³²

²⁷ *People v. Cross*, 135 N. Y. 536, 31 Am. St. Rep. 850, 32 N. E. 246.

²⁸ *Lascelles v. Géorgie*, 148 U. S. 543, 13 S. Ct. 689, 37 L. ed. 549; *State v. Leidigh*, 47 Neb. 131, 66 N. W. 309; *State v. Patterson*, 116 Mo. 515, 22 S. W. 698.

²⁹ *Lascelles v. Georgia*, 148 U. S. 543, 13 S. Ct. 689, 37 L. ed. 549.

³⁰ *Roberts v. Reilly*, 116 U. S. 95, 6 S. Ct. 291, 29 L. ed. 544; *Cook v. Hart*, 146 U. S. 193, 13 S. Ct. 43, 36 L. ed. 934; *In re Cook*, 49 Fed. 838; *In re White*, 55 Fed. 57; *Ex parte Hart*, 59 Fed. 895.

³¹ *Kentucky v. Dennison*, 24 How. 104, 16 L. ed. 717; *Ex parte Powell*, 20 Fla. 809; *Ex parte Pearce*, 32 Tex. Cr. 305, 23 S. W. 16; *In re Hooper*, 52 Wis. 703, 58 N. W. 741.

³² *Ex parte Reggel*, 114 U. S. 651, 5 S. Ct. 1152, 29 L. ed. 250; *Webb v. New York*, 79 Fed. 622; *Barranger v. Baum*, 103 Ga. 474, 68 Am. St. Rep. 121, 30 S. E. 528; *State v. Goss*, 66 Minn. 293, 68 N. W. 1090; *In re Van Scieever*, 42 Neb. 780, 47 Am. St. Rep. 734, 60 N. W. 1039.

The complaint in extradition need not be sworn to by persons having actual knowledge of the offense charged.³³

The demand and the accompanying charge are conclusive of the criminality of the offense,³⁴ but the question whether the fugitive is properly charged with a crime is one of law, determinable on habeas corpus.³⁵ Where the indictment substantially charges a criminal offense, the courts will not go behind it nor inquire into the circumstances.³⁶ A copy of the indictment authenticated by the governor of the demanding state is conclusive,³⁷ and the precept is prima facie evidence of the truth of the matters recited for the protection of the agent.³⁸ Where the indictment certified as authentic charges a crime under the laws of the demanding state a copy of such laws need not be furnished.³⁹ The executive of the asylum state may require competent proof that the accused is, in fact, a fugitive from the justice of the demanding state,⁴⁰ and it will always be presumed that he insisted upon proof sufficient to properly inform himself on the subject.⁴¹ Whether an extraditable crime has

³³ *Rice v. Ames*, 180 U. S. 378, 21 S. Ct. 406, 45 L. ed. 577. But see *Ex parte Spears*, 88 Cal. 641, 22 Am. St. Rep. 342, 26 Pac. 609.

³⁴ *Kentucky v. Dennison*, 24 How. 99, 16 L. ed. 717; *In re Leary*, 10 Ben. 208, Fed. Cas. No. 8162; *Morton v. Skinner*, 48 Ind. 124; *State v. Stewart*, 60 Wis. 594, 50 Am. Rep. 393, 19 N. W. 432; *Ex parte Clark*, 9 Wend. 212; *People v. Brady*, 56 N. Y. 182.

³⁵ *Roberts v. Reilly*, 116 U. S. 96, 6 S. Ct. 291, 29 L. ed. 544; *Ex parte Spears*, 88 Cal. 641, 22 Am. St. Rep. 342, 26 Pac. 609; *Barranger v. Baum*, 103 Ga. 475, 68 Am. St. Rep. 122, 30 S. E. 528.

³⁶ *Taylor v. Taintor*, 16 Wall. 366, 21 L. ed. 287; *Kentucky v. Dennison*, 24 How. 99, 16 L. ed. 717; *Kingsbury's Case*, 106 Mass. 223; *Brown's Case*, 112 Mass. 409, 17 Am. Rep. 114; *In re Voorhees*, 32 N. J. L. 149; *In re Clark*, 9 Wend. 212; *Johnson v. Riley*, 13 Ga. 97; *In re Greenough*, 31 Vt. 279.

³⁷ *Kentucky v. Dennison*, 24 How. 66, 16 L. ed. 717; *Taylor v. Taintor*, 16 Wall. 366, 21 L. ed. 287; *Johnson v. Riley*, 13 Ga. 97; *Brown's Case*, 112 Mass. 409, 17 Am. Rep. 114; *People v. Brady*, 56 N. Y. 182; *In re Voorhees*, 32 N. J. L. 149; *Works v. Carrington*, 34 Ohio St. 64, 32 Am. Rep. 345; *In re Fetter*, 3 Zab. 311, 57 Am. Dec. 382.

³⁸ *Commonwealth v. Hall*, 9 Gray, 267, 69 Am. Dec. 285.

³⁹ *Roberts v. Reilly*, 116 U. S. 96, 6 S. Ct. 291, 29 L. ed. 544.

⁴⁰ *Ex parte Reggel*, 114 U. S. 652, 5 S. Ct. 1148, 29 L. ed. 250.

⁴¹ *Roberts v. Reilly*, 116 U. S. 96, 6 S. Ct. 291, 29 L. ed. 544.

been committed is a mixed question of law and fact, but chiefly of fact.⁴²

The surrender of fugitives to the state whose laws have been violated is the only aid provided by the United States laws for the punishment of depredations committed in one state by intruders from other states.⁴³ The right to claim the surrender of a fugitive can be carried into effect only through the medium of laws and the intervention of magistrates.⁴⁴ The constitution does not assume to deal with the question of extradition before the proper executive demand has been made, or undertake, in the absence of such demand to define the duties or limit the authority of the state within which the fugitive may be found.⁴⁵ This clause does not prohibit a state from passing laws for the capture of fugitives from justice,⁴⁶ nor does it prevent the arrest and detention of a prisoner until a formal requisition can be made by the proper authority in the state whence he has fled.⁴⁷ An escaped fugitive who returns to the asylum state may be rearrested there on an alias warrant issued by the governor, upon a credible notice of the escape, without new requisition papers.⁴⁸

— Duty to Surrender.

The duty to surrender a demanded prisoner is based upon the federal constitution and embraces all crimes.⁴⁹ The constitutional provision is in the nature of a treaty between the states,⁵⁰

⁴² *Ornelas v. Ruiz*, 161 U. S. 509, 16 S. Ct. 689, 40 L. ed. 787.

⁴³ *Mahon v. Justice*, 127 U. S. 705, 8 S. Ct. 124, 32 L. ed. 283.

⁴⁴ *Commonwealth v. Tracy*, 46 Mass. 536.

⁴⁵ *Ex parte White*, 49 Cal. 433; *Ex parte Cubreth*, 49 Cal. 435; *Commonwealth v. Tracy*, 46 Mass. 536.

⁴⁶ *Ex parte Ammons*, 34 Ohio St. 518.

⁴⁷ *Gardner's Case*, 2 Johns. 477; *Commonwealth v. Deacon*, 10 Serg. & R. 135; *Dow's Case*, 6 How. 30; *In re Fetter*, 3 Zab. 311, 57 Am. Dec. 382; *State v. Buzine*, 4 Harr. 572; *In re Clark*, 9 Wend. 221; *Goodhue's Case*, 1 City H. Rec. 153.

⁴⁸ *Ex parte Hobbs*, 32 Tex. Cr. 312, 40 Am. St. Rep. 782, 22 S. W. 1035.

⁴⁹ *People v. Cross*, 135 N. Y. 536, 31 Am. St. Rep. 850, 32 N. E. 246.

⁵⁰ *Hibler v. State*, 43 Tex. 203.

and its whole effect is to confer on each member of the Union a right to demand from every other member a fugitive, and to make obligatory the surrender which was before discretionary.⁵¹ So far as seeing that the case is a proper one, the governor of the asylum state acts judicially.⁵² He represents the sovereignty of his state, and cannot be compelled to act, but if he does, and the fugitive is surrendered, the asylum state cannot require the fugitive's appearance before its tribunals.⁵³ State courts cannot control the executive discretion, nor compel the surrender of a fugitive, but where the governor has acted the action may be inquired into.⁵⁴ The governor or executive authority of the state or territory to which a fugitive is fled shall, upon demand, deliver him up,⁵⁵ and the state upon which the demand is made cannot look behind the indictment or affidavit in which the crime against the demanding state is charged.⁵⁶ Where there is a conflict of jurisdictions between the demanding state and the asylum state, as where the fugitive is charged also with an offense against the latter, the surrender may be postponed,⁵⁷ or the asylum state may waive its jurisdiction to try the accused and surrender him to the demanding state.⁵⁸ An extradited prisoner who escapes and returns to the asylum state and is arrested for a crime committed in that state after his return may be held until the disposition of the charge before

⁵¹ *Kentucky v. Dennison*, 24 How. 103, 16 L. ed. 717; *Taylor v. Taintor*, 16 Wall. 370, 21 L. ed. 287; *Matter of Briscoe*, 51 How. Pr. 422; *State v. Schleiman*, 4 Harr. 577; *State v. Buzine*, 4 Harr. 572; *Commonwealth v. Green*, 17 Mass. 547; *In re Voorhees*, 32 N. J. L. 145; *In re Fetter*, 3 Zab. 311, 57 Am. Dec. 382; *Work v. Carrington*, 34 Ohio St. 64, 32 Am. Rep. 345; *Wyeth v. Richardson*, 10 Gray, 240.

⁵² *In re Greenough*, 31 Vt. 279.

⁵³ *Taylor v. Taintor*, 16 Wall. 370, 374, 21 L. ed. 287; *In re Mohr*, 73 Ala. 509, 49 Am. Rep. 70; *Barranger v. Baum*, 103 Ga. 474, 68 Am. St. Rep. 121, 30 S. E. 528.

⁵⁴ *Ex parte Manchester*, 5 Cal. 237; *Jones v. Leonard*, 50 Iowa, 110, 32 Am. Rep. 119.

⁵⁵ *Brown's Case*, 112 Mass. 409, 17 Am. Rep. 114.

⁵⁶ *Johnston v. Riley*, 13 Ga. 97; *In re Voorhees*, 32 N. J. L. 145.

⁵⁷ *Taylor v. Taintor*, 16 Wall. 370, 374, 21 L. ed. 287; *In re Briscoe*, 51 How. Pr. 422; *State v. Allen*, 2 Humph. 258; *In re Troutmar*, 4 Zab. 604.

⁵⁸ *Roberts v. Reilly*, 116 U. S. 96, 6 S. Ct. 291, 29 L. ed. 544.

redelivery under a second requisition.⁵⁹ The federal courts cannot compel the exercise of comity between states where one state refuses to exercise it,⁶⁰ and if a governor upon whom a demand is made for a fugitive refuses to discharge his duty there is no power, either in the federal or state governments, to compel action upon the requisition.⁶¹ The governor may effectively revoke his extradition warrant at any time before the prisoner is removed from the state.⁶²

The states may pass laws auxiliary to the provisions of the constitution,⁶³ and a law intended as an aid to the enforcement of an act of Congress relative to the surrender of fugitives is valid;⁶⁴ e. g., a law authorizing the arrest of a fugitive from justice before a formal demand for his surrender has been made, and his detention for a reasonable time to afford an opportunity for such demand.⁶⁵ A law requiring the arresting officer to take his prisoner before the nearest judge for identification is valid,⁶⁶ as is a law which makes it the duty of the executive to issue the warrant upon a proper requisition.⁶⁷ Congress has the power

⁵⁹ *Ex parte Hobbs*, 32 Tex. Cr. 312, 40 Am. St. Rep. 782, 22 S. W. 1035.

⁶⁰ *Mahon v. Justice*, 127 U. S. 706, 8 S. Ct. 1204, 32 L. ed. 283.

⁶¹ *Kentucky v. Dennison*, 24 How. 107, 16 L. ed. 717; *Taylor v. Taintor*, 16 Wall. 370, 21 L. ed. 287; *Work v. Carrington*, 34 Ohio St. 73, 32 Am. Rep. 350; *Ex parte Manchester*, 5 Cal. 237.

⁶² *State v. Toole*, 69 Minn. 104, 65 Am. St. Rep. 553, 72 N. W. 53.

⁶³ *Holmes v. Jennison*, 14 Pet. 540, 10 L. ed. 579; *Moore v. Illinois*, 14 How. 21, 14 L. ed. 306; *In re Romaine*, 23 Cal. 585; *Ex parte Cubreth*, 49 Cal. 436; *Ex parte Rosenblatt*, 51 Cal. 285; *Robinson v. Flanders*, 29 Ind. 10; *Ex parte Smith*, 3 McLean, 121, Fed. Cas. No. 12,968; *Commonwealth v. Hall*, 9 Gray, 262, 69 Am. Dec. 285; *Commonwealth v. Tracy*, 46 Mass. 536.

⁶⁴ *Commonwealth v. Hall*, 9 Gray, 262, 69 Am. Dec. 285.

⁶⁵ *Ex parte Cubreth*, 49 Cal. 436; *Ex parte White*, 49 Cal. 434; *Dow's Case*, 6 Harr. 39; *State v. Buzine*, 4 Harr. 572; *Goodhue's Case*, 1 Wheel. C. C. 427; *Gardner's Case*, 2 Johns. 477; *Commonwealth v. Wilson*, Phila. 80; *Commonwealth v. Deacon*, 10 Serg. & R. 135; *In re Fetter*, 3 Zab. 311, 57 Am. Dec. 382; *People v. Schenck*, 2 Johns. 479; *People v. Wright*, 2 Caines, 213; *Ex parte Heyward*, 1 Sandf. 701; *Ex parte Ammons*, 34 Ohio St. 518.

⁶⁶ *Robinson v. Flanders*, 29 Ind. 10.

⁶⁷ *Ex parte Smith*, 3 McLean, 121, Fed. Cas. No. 12,968.

to invest a national officer with authority to cause the arrest and to surrender the fugitive upon demand duly made.⁶⁸

This clause has no reference to the delivery to foreign nations of fugitives from justice; the power to surrender fugitives to foreign governments belongs to the federal government exclusively, (1) because it is included in the treaty-making power which was surrendered by the states and forbidden by the constitution, and (2) because its exercise by the states would be incompatible with its exercise by the national government.⁶⁹ Even in the absence of a treaty or an act of Congress a state cannot negotiate with a foreign government regarding the surrender of fugitives,⁷⁰ and a state statute providing for the surrender of foreign fugitives is void.⁷¹

— Rights of Accused.

When a fugitive from justice has been surrendered by the governor of the state in which he was found, the regularity of the proceeding cannot be questioned on the trial;⁷² but on the proceedings for extradition he is entitled to insist upon proof, before the governor of the asylum state, that he was within the demanding state at the time of the alleged crime, and subsequently withdrew therefrom.⁷³ Whenever a state executive causes the arrest of a fugitive from another state, on demand of its governor, the prisoner is held under color of federal law, and may test the legality of the arrest by habeas corpus in the state or federal courts.⁷⁴ Whether the accused was properly charged with crime is a question of law open in habeas corpus proceed-

⁶⁸ *In re Voorhees*, 32 N. J. L. 145.

⁶⁹ *Holmes v. Jennison*, 14 Pet. 571, 10 L. ed. 579; *In re Kaine*, 14 How. 103, 14 L. ed. 345; *In re Washburn*, 4 Johns. Ch. 106; *Commonwealth v. Green*, 17 Mass. 546; *Commonwealth v. Deacon*, 10 Serg. & R. 125; *People v. Curtis*, 50 N. Y. 325, 10 Am. Rep. 486.

⁷⁰ *United States v. Bauscher*, 119 U. S. 412, 7 S. Ct. 237, 30 L. ed 425.

⁷¹ *People v. Curtis*, 50 N. Y. 325, 10 Am. Rep. 486.

⁷² *Ker v. Illinois*, 119 U. S. 441, 7 S. Ct. 225, 30 L. ed. 421.

⁷³ *Ex parte Reggel*, 114 U. S. 651, 5 S. Ct. 1148, 29 L. ed. 250; *In re White*, 55 Fed. 58; *State v. Hall*, 115 N. C. 814, 44 Am. St. Rep. 503, 20 S. E. 730, 28 L. R. A. 289.

⁷⁴ *Roberts v. Reilly*, 116 U. S. 95, 6 S. Ct. 291, 29 L. ed. 544.

ings,⁷⁵ and in such a proceeding a state court may determine whether the arrest and delivery of the accused to the agent of the demanding state conformed to the statutes of the United States.⁷⁶ The courts of the asylum state cannot consider the technical sufficiency of the indictment or the constitutionality of the laws under which it was brought, but only the prerequisites for requisition;⁷⁷ it is only required that the indictment be substantially in accordance with the laws of the demanding state.⁷⁸ The accused is not entitled to have the question of his guilt or innocence inquired into.⁷⁹

A fugitive surrendered by a state for trial in another state does not, in his person, bear the sovereignty of the surrendering state, and extradition, lawfully obtained subjects the fugitive to trial for an offense other than that charged in the requisition.⁸⁰ Nor is an extradited prisoner exempt from civil prosecution in the demanding state while in custody for the offense for which he was returned.⁸¹ A person indicted in one state and by force, fraud or deceit taken into that state from another, is not entitled to his discharge because of such unlawful abduction,⁸²

⁷⁵ *Roberts v. Reilly*, 116 U. S. 95, 6 S. Ct. 291, 29 L. ed. 544; *Ex parte Spears*, 88 Cal. 641, 22 Am. St. Rep. 342, 26 Pac. 609; *Barranger v. Baum*, 103 Ga. 475, 68 Am. St. Rep. 122, 30 S. E. 528.

⁷⁶ *Robb v. Connolly*, 111 U. S. 639, 4 S. Ct. 544, 28 L. ed. 542.

⁷⁷ *Pearce v. Texas*, 155 U. S. 313, 15 S. Ct. 116, 39 L. ed. 164.

⁷⁸ *Ex parte Reggel*, 114 U. S. 651, 5 S. Ct. 1148, 29 L. ed. 250; *Brown v. New Jersey*, 175 U. S. 175, 20 S. Ct. 77, 44 L. ed. 119; *Ex parte Dawson*, 83 Fed. 308; *Kurtz v. State*, 22 Fla. 43, 1 Am. St. Rep. 176; *Barranger v. Baum*, 103 Ga. 475, 68 Am. St. Rep. 122, 30 S. E. 523.

⁷⁹ *In re White*, 55 Fed. 58.

⁸⁰ *Lascelles v. Georgia*, 148 U. S. 543, 546, 13 S. Ct. 687, 37 L. ed. 549; affirming 90 Ga. 366, 35 Am. St. Rep. 222, 16 S. E. 947; *Price v. M'Carty*, 89 Fed. 87, 59 U. S. App. 584; *Carr v. State*, 104 Ala. 13, 16 South. 153; *State v. Patterson*, 116 Mo. 515, 22 S. W. 698; *State v. Walker*, 119 Mo. 469, 24 S. W. 1011; *Commonwealth v. Wright*, 158 Mass. 149, 35 Am. St. Rep. 475, 33 N. E. 82, 19 L. R. A. 206.

⁸¹ *Reid v. Ham*, 54 Minn. 305, 40 Am. St. Rep. 333, 56 N. W. 35, 21 L. R. A. 232.

⁸² *Mahon v. Justice*, 127 U. S. 707, 8 S. Ct. 1204, 32 L. ed. 283. But see *In re Robinson*, 29 Neb. 135, 26 Am. St. Rep. 378, 45 N. W. 67, 8 L. R. A. 398.

and a prisoner voluntarily accompanying the officer into the state where he has been indicted cannot afterward object that the proper requisition was not made.⁸³ But it has been held that the arrest of a person upon telegraphic notification from another state reciting that a warrant and proper papers have been issued is unauthorized, and he is entitled to his discharge on habeas corpus.⁸⁴ Where it is necessary to pass through another state in taking a prisoner from the place where he was convicted to the penitentiary, he is not entitled to his release on habeas corpus while in such other state, on the theory that he is illegally detained as a fugitive from justice.⁸⁵

⁸³ *State v. Cutshall*, 109 N. C. 764, 26 Am. St. Rep. 599, 14 S. E. 107.

⁸⁴ *Simmons v. Van Dyke*, 138 Ind. 380, 46 Am. St. Rep. 411, 37 N. E. 973, 26 L. R. A. 33.

⁸⁵ *In re Maney*, 20 Wash. 509, 72 Am. St. Rep. 130, 55 Pac. 930.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Object of Clause.

The object of this provision was to secure to the citizens of the slave-holding states the complete ownership in their slaves as property, in every state in the Union to which they might escape from the state where they were held in servitude; without it every nonslave-holding state would have been at liberty to declare free all runaway slaves coming within their limits.¹ It contemplated the existence of a positive, unqualified right on the part of the owner of the slave, which no state law could in any way qualify, regulate, control or restrain.² The states could not be compelled to enforce the provision for surrender in the absence of positive legislation on the part of Congress, and the power to enact such legislation was given to Congress exclusively;³ but the courts recognized the power of the states to enact police regulations providing for the arrest and detention of fugitive slaves so long as they did not conflict with acts of Congress.⁴ So an act making the harboring of a fugitive slave a punishable offense was declared not to be objectionable merely because the same act was penalized by the acts of Congress.⁵ The acts of Congress upon this subject were clearly constitu-

¹ *Prigg v. Commonwealth*, 16 Pet. 611, 612, 10 L. ed. 1060; *Osborn v. Nicholson*, 13 Wall. 662, 20 L. ed. 689; *Buckner v. Street*, 1 Di'll. 254, Fed. Cas. No. 2098; *McElvain v. Mudd*, 44 Ala. 52, 4 Am. Rep. 108; *Henderlite v. Thurman*, 22 Gratt. 469, 12 Am. Rep. 528.

² *Prigg v. Commonwealth*, 16 Pet. 612, 10 L. ed. 1060.

³ *Prigg v. Commonwealth*, 16 Pet. 622, 10 L. ed. 1060; *Jones v. Van Zandt*, 5 How. 215, 12 L. ed. 122; *In re Martin*, 2 Paine, 343, Fed. Cas. No. 9154; *In re Susan*, 2 Wheel. C. C. 594.

⁴ *In re Perkins*, 2 Cal. 432; *Freeman v. Robinson*, 7 Ind. 323; *In re Booth*, 3 Wis. 125.

⁵ *Moore v. Illinois*, 14 How. 20, 21, 14 L. ed. 306. And see *Prigg v. Commonwealth*, 16 Pet. 625, 10 L. ed. 1060.

tional.⁶ The constitution and laws did not confer, but merely secured, the right to reclaim slaves which were recognized as the subject of property.⁷ The constitution, by this clause, recognized as plenary and exclusive the power of the states as to the status of slaves within their territory, subject to the express limitation in the case of slaves fleeing from service.^{7a}

— Construction of Terms.

The "persons" referred to were African slaves,⁸ but the term was not intended to embrace slaves voluntarily carried by their masters into free states.⁹ The words "in one state" extend to the territories, the District of Columbia, and the Indian territory.¹⁰ "Shall be delivered up" contemplated summary and informal proceedings,¹¹ and the word "claim" was given its ordinary legal meaning, viz., a demand of some matter as of right made by one person upon another to do or to forbear some act

⁶ *Prigg v. Commonwealth*, 5 How. 230, 10 L. ed. 1060; *Jones v. Van Zandt*, 5 How. 229, 12 L. ed. 122; *Ableman v. Booth*, 21 How. 526, 16 L. ed. 169; *Sim's Case*, 7 Cush. 301; *Johnson v. Tompkins*, *Baldw.* 571, *Fed. Cas. No.* 7416; *Hill v. Low*, 4 Wash. C. C. 326, *Fed. Cas. No.* 6494; *Glenn v. Hodges*, 9 Johns. 67; *Commonwealth v. Aves*, 18 Pick. 215; *Jack v. Martin*, 12 Wend. 311; *Wright v. Deacon*, 5 Serg. & R. 62.

⁷ *Ableman v. Booth*, 21 How. 526, 16 L. ed. 169; *Johnson v. Tompkins*, *Baldw.* 571, *Fed. Cas. No.* 7416; *The Fugitive Slave Law*, 1 Blatchf. 636, *Fed. Cas. No.* 18,261; *Giltner v. Gorham*, 4 McLean, 402, *Fed. Cas. No.* 5453; *Sim's Case*, 7 Cush. 285.

^{7a} *Groves v. Slaughter*, 15 Pet. 449, 10 L. ed. 800; *Moore v. Illinois*, 14 How. 20, 14 L. ed. 306; *Lemmon v. People*, 20 N. Y. 566.

⁸ *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691; *Lemmon v. People*, 20 N. Y. 624.

⁹ *Strader v. Graham*, 10 How. 82, 13 L. ed. 337; *Vaughan v. Williams*, 3 McLean, 530, *Fed. Cas. No.* 16,903; *Miller v. McQuerry*, 5 McLean, 469, *Fed. Cas. No.* 9583; *Butler v. Hopper*, 1 Wash. C. C. 499, *Fed. Cas. No.* 2241; *In re Perkins*, 2 Cal. 424; *Kauffman v. Oliver*, 10 Pa. St. 517.

¹⁰ *Anonymous*, 3 Opin. Atty. Gen. 370; *Anonymous*, 6 Opin. Atty. Gen. 302, 304.

¹¹ *Prigg v. Commonwealth*, 16 Pet. 667, 10 L. ed. 1060; *Jack v. Martin*, 14 Wend. 507; *Sim's Case*, 61 Mass. 285; *Wright v. Deacon*, 5 Serg. & R. 62.

as a matter of duty.¹² The "notice" prescribed by the fugitive slave law in order to fix the liability of the person harboring the fugitive was not required to be in writing; any manner of imparting the information contemplated was deemed sufficient.¹³ Any overt act intended and calculated to elude the owner's vigilance was a "harboring and concealing" within the statute.¹⁴

¹² *Prigg v. Commonwealth*, 16 Pet. 615, 10 L. ed. 1060.

¹³ *Jones v. Van Zandt*, 5 How. 225, 12 L. ed. 122.

¹⁴ *Jones v. Van Zandt*, 5 How. 227, 12 L. ed. 122.

SECTION 3.

NEW STATES. TERRITORIES.

1. Admission of.
2. Power of United States over Territorial and other property.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

Construction of Clause.

This clause refers to and includes new states to be formed out of territory yet to be acquired, as well as that already ceded to the United States.¹ New states when admitted have equal sovereignty with the older ones, and are entitled to all the rights of jurisdiction and eminent domain which the original states possessed,² whether such equality be stipulated for in the act of admission or not,³ and this admission on an equal footing involves the adoption as citizens of the United States of those whom Congress recognizes as members of the political community, and who are recognized as such in the formation of the

¹ *Dred Scott v. Sandford*, 19 How. 612, 15 L. ed. 691..

² *Pollard's Lessee v. Hagan*, 3 How. 223, 11 L. ed. 565; *Permoli v. First Municipality*, 3 How. 609, 11 L. ed. 739; *McKinney v. Saviego*, 18 How. 240, 15 L. ed. 365; *Cummings v. Missouri*, 4 Wall. 319, 18 L. ed. 356; *Sands v. Manistee River Imp. Co.*, 123 U. S. 296, 8 S. Ct. 113, 31 L. ed. 149; *Ward v. Race Horse*, 163 U. S. 514, 16 S. Ct. 1073, 41 L. ed. 244; *Wallamet Br. Co. v. Hatch*, 9 Saw. 652, 19 Fed. 353; *State v. Board*, 76 Wis. 207, 20 Am. St. Rep. 58, 44 N. W. 977; *People v. United States*, 93 Ill. 35, 34 Am. Rep. 157.

³ *Illinois Central R. R. Co. v. Illinois*, 146 U. S. 434, 13 S. Ct. 110, 36 L. ed. 1018.

new state.⁴ When, also, a state enters the Union it is solemnly pledged to the other states to support the constitution as it is, in all its provisions, until altered in the manner which the constitution itself provides,^{4a} and she cannot, by a compact with the United States, enlarge or diminish her constitutional rights or liabilities.⁵

— Power of Congress.

Congress is vested with the sole power of admitting new states into the Union,⁶ but the concurrence of both federal and state governments is required to effect the transfer of records from the old to the new government.⁷ Stipulations imposed by Congress as conditions upon which a new state will be admitted may be effectual as a regulation of commerce or other exercise of a conditional grant of power.⁸ But a provision granting municipal rights of sovereignty would be void and inoperative.⁹ If Congress, upon the application of a territory, consents to admit it as a state upon condition that certain alterations in the proposed constitution be made, such alterations, when accepted, become a part of the state constitution.¹⁰ When a condition annexed to a state constitution is legally and formally rescinded, the powers disclaimed in the condition may be resumed and immediately exercised by the state authorities.¹¹ The power to acquire territory by conquest or treaty is incidental to the absolute grants of power to make war and to make treaties.¹²

⁴ *Boyd v. Nebraska*, 143 U. S. 170, 12 S. Ct. 375, 36 L. ed. 103.

^{4a} *Ableman v. Booth*, 21 How. 525, 16 L. ed. 169.

⁵ *Pollard's Lessee v. Hagan*, 3 How. 229, 11 L. ed. 565; *Wallamet Br. Co. v. Hatch*, 9 Saw. 652, 19 Fed. 353.

⁶ *Brittle v. People*, 2 Neb. 198.

⁷ *Benner v. Porter*, 9 How. 246, 13 L. ed. 119.

⁸ *Pollard's Lessee v. Hagan*, 3 How. 229, 11 L. ed. 565.

⁹ *Pollard's Lessee v. Hagan*, 3 How. 229, 11 L. ed. 565; *Strader v. Graham*, 10 How. 82, 13 L. ed. 337; *Depew v. Trustees*, 5 Ind. 8.

¹⁰ *Brittle v. People*, 2 Neb. 198.

¹¹ *Duke v. Navigation Co.*, 10 Ala. 82, 44 Am. Dec. 472.

¹² *American Ins. Co. v. Cotton*, 1 S. Ct. 542, 7 L. ed. 242; *Sere v. Pitot*, 6 Cr. 336, 3 L. ed. 240; *Fleming v. Page*, 9 How. 614, 13 L. ed. 276; *Cross v. Harrison*, 16 How. 189, 14 L. ed. 889; *Dred Scott v. Sandford*, 19 How. 385, 15 L. ed. 691. See, also, *Worcester v.*

The consent of the legislatures of the states in the cases provided for by this clause may be given upon conditions which, if accepted, are binding upon the general government.¹³

— **Effect of Admission.**

By the admission of a territory as a state, the territorial government and all authority under it ceases to exist,¹⁴ and unless otherwise declared by Congress, title to every species of property owned by the territory passes to the state.¹⁵ The acceptance of a new state operates to vest in its government the title to lands below high-water mark on navigable waters,¹⁶ and the disclaimer of a new state, as a condition of admission, to all unappropriated public lands does not include land beneath tide water and navigable streams.¹⁷ The jurisdiction of the territorial courts ceases upon the creation of a territory into a state, and thereafter there is no jurisdiction in federal cases until Congress extends the judicial power over the state,¹⁸ and when this has been done cases pending at the time of admission may be removed to the federal courts if of a proper character.¹⁹ The ordinance of 1787 ceased to operate in a state formed out of the old Northwest Territory, unless re-enacted by such state.²⁰

Georgia, 6 Pet. 515, 8 L. ed. 483; *New Orleans v. De Armas*, 9 Pet. 224, 9 L. ed. 109; *Holden v. Joy*, 17 Wall. 211, 21 L. ed. 523.

¹³ *Pollard's Lessee v. Hagan*, 3 How. 223, 11 L. ed. 565.

¹⁴ *McNulty v. Batty*, 10 How. 78, 13 L. ed. 333.

¹⁵ *Brown v. Grant*, 116 U. S. 212, 6 S. Ct. 357, 29 L. ed. 598.

¹⁶ *Mobile v. Emanuel*, 1 How. 100, 11 L. ed. 60; *Weber v. Board of Harbor Commissioners*, 18 Wall. 66, 21 L. ed. 798; *Willamette Iron Br. Co. v. Hatch*, 125 U. S. 12, 8 S. Ct. 811, 31 L. ed. 629; *Knight v. United States Land Assn.*, 142 U. S. 183, 12 S. Ct. 253, 35 L. ed. 974; *Shively v. Bowlby*, 152 U. S. 26, 14 S. Ct. 548, 38 L. ed. 331.

¹⁷ *Mann v. Tacoma Land Co.*, 153 U. S. 284, 14 S. Ct. 820, 38 L. ed. 714.

¹⁸ *Benner v. Porter*, 9 How. 243, 13 L. ed. 119; *McNulty v. Batty*, 10 How. 78, 13 L. ed. 333; *Freeborn v. Smith*, 2 Wall. 175, 17 L. ed. 922.

¹⁹ *Glaspell v. Northern Pac. R. R. Co.*, 144 U. S. 219, 12 S. Ct. 593, 36 L. ed. 409.

²⁰ *Permoli v. First Municipality*, 3 How. 610, 11 L. ed. 739; *Strader v. Graham*, 10 How. 82, 13 L. ed. 337; *Escandaba Co. v. Chicago*, 107 U. S. 688, 2 S. Ct. 185, 27 L. ed. 442; *Van Brocklin v. Tennessee*, 117 U. S. 159, 6 S. Ct. 670, 29 L. ed. 845; *Huse v. Glover*, 119 U. S. 546, 7 S. Ct. 313, 30 L. ed. 487; *Sands v. Manistee River Imp. Co.*, 123 U. S. 296, 8 S. Ct. 113, 31 L. ed. 149.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Construction of Clause.

The term "territory" as used in this provision is equivalent to the word "lands,"¹ and the words "respecting the territory" refer only to the territory owned by the United States at the time of the adoption of the constitution,² subsequently acquired property being subject to the legislation of Congress as an incident to its ownership.³ "To dispose of" means to make sales of the lands, or otherwise to raise money from them,⁴ and "needful rules" comprehends all appropriate legislation,⁵ including the passage of all laws necessary to secure the rights of the United States to the public lands, to provide for their sale, and to protect them from taxation.⁶

— Power of Congress.

As stated, the term "territory" is equivalent to the word "lands," and congressional authority over territories, as such, results from the ownership of the country and the right of exclusive sovereignty which can exist only in the national government, rather than from the grant of power by this clause to dispose of and regulate the territory of the United States.⁷ Congress has the sole power to make the necessary rules and regulations respecting public lands, without interference on the part of state or territorial governments.⁸ Congress has jurisdiction

¹ *United States v. Gratiot*, 14 Pet. 537, 10 L. ed. 573.

² *Dred Scott v. Sandford*, 19 How. 442, 15 L. ed. 691.

³ *American Ins. Co. v. Cotton*, 1 Pet. 543, 7 L. ed. 242.

⁴ *Dred Scott v. Sandford*, 19 How. 615, 15 L. ed. 691.

⁵ *Dred Scott v. Sandford*, 19 How. 615, 15 L. ed. 691.

⁶ *Pollard's Lessee v. Hagan*, 3 How. 212, 11 L. ed. 565.

⁷ *United States v. Kagama*, 118 U. S. 380, 6 S. Ct. 1109, 30 L. ed. 228.

⁸ *Jourdan v. Barrett*, 4 How. 185, 11 L. ed. 924; *Wilcox v. Jack-*

over such lands irrespective of their situs,⁹ and the admission of a territory as a state does not destroy the power of Congress over public lands within the limits of the new state.¹⁰ The power of Congress in disposing of the public lands is not limited to sale, but includes the power to lease;¹¹ but all dispositions of public lands must be by Congress or by its authority.¹² A military officer at the head of a provisional government has no authority to make a grant of public lands.¹³

Congress has the absolute right to prescribe the times, conditions, and modes of transfer of the public domain and to whom transfers shall be made,¹⁴ and it has the sole power to declare the dignity and effect of titles emanating from the United States;¹⁵ and when an act of Congress makes a patent necessary, to complete a title, no state can make anything else evidence of title,¹⁶ nor can a state pass a law depriving a patentee of the possession of land because of the delay in the transfer of title after the initiation of proceedings for its acquisition.¹⁷ So, also, Congress may provide that all transfers and contracts relating to public land, made before patent issues, shall be void,¹⁸ and may dispose of lands as homesteads secured from execution

son, 13 Pet. 516, 10 L. ed. 264; *United States v. Fitzgerald*, 15 Pet. 421, 10 L. ed. 785; *Irvine v. Marshall*, 20 How. 563, 15 L. ed. 994; *Gibson v. Chouteau*, 13 Wall. 99, 20 L. ed. 534; *Kissell v. St. Louis Public Schools*, 18 How. 24, 15 L. ed. 324.

⁹ *Irvine v. Marshall*, 20 How. 563, 15 L. ed. 994.

¹⁰ *Camfield v. United States*, 167 U. S. 526, 17 S. Ct. 864, 42 L. ed. 260.

¹¹ *United States v. Gratiot*, 14 Pet. 526, 10 L. ed. 573.

¹² *Seabury v. Field*, 1 McAll. 1, Fed. Cas. No. 12,574; *United States v. Fitzgerald*, 15 Pet. 407, 10 L. ed. 785; *United States v. Nicol*, 1 Paine, 646, Fed. Cas. No. 15,879; *McConnell v. Wilcox*, 2 Ill. 344.

¹³ *Seabury v. Field*, 1 McAll. 1, Fed. Cas. No. 12,574.

¹⁴ *Irvine v. Marshall*, 20 How. 558, 15 L. ed. 994; *Gibson v. Chouteau*, 13 Wall. 92, 20 L. ed. 534.

¹⁵ *Bagnell v. Broderick*, 13 Pet. 450, 10 L. ed. 235; *Langdon v. Sherwood*, 124 U. S. 85, 8 S. Ct. 429, 31 L. ed. 344; *Emblen v. Lincoln Land Co.*, 102 Fed. 559.

¹⁶ *Wilcox v. Jackson*, 13 Pet. 498, 10 L. ed. 264.

¹⁷ *Gibson v. Chouteau*, 13 Wall. 92, 20 L. ed. 534.

¹⁸ *Van Dyke v. McVey*, 16 Ill. 41; *Rose v. Buckland*, 17 Ill. 309.

for debt prior to the issue of patents.¹⁹ Congress has the power to dispose of the public lands for such purposes as in its judgment will best subserve the public interest,²⁰ and it alone has power to make and authorize appropriations of public lands.²¹ A provision that claims for land shall be filed within a specified time, and that if they are not so filed, they shall be barred, is within the power of Congress.²² This clause does not confer on Congress any power to dispose of the shores of navigable waters or the soil under such waters within a state.²³

— Jurisdiction Over Territories.

The power of governing a territory of the United States, which has not by becoming a state acquired the means of self-government, belongs to the United States to the fullest extent.²⁴ As the owner of such a territory, the national government has supreme power over it and its inhabitants,²⁵ and its dominion is entire so long as the territory continues to be such;²⁶ it is the inevitable consequence of the power to acquire and own.²⁷

In the exercise of its plenary power over the public domain, Congress may establish territorial governments and invest them with powers of legislation.²⁸ The government of the territories belongs primarily to Congress, secondarily, to such agencies as Congress may establish for that purpose;²⁹ they must be gov-

¹⁹ *Miller v. Little*, 47 Cal. 348; *Russell v. Lowth*, 21 Mi. 167, 18 Am. Rep. 389; *Gile v. Hallock*, 33 Wis. 523.

²⁰ *Homestead Co. v. Valley R. R. Co.*, 17 Wall. 166, 21 L. ed. 622.

²¹ *United States v. Fitzgerald*, 15 Pet. 421, 10 L. ed. 785.

²² *Strother v. Lucas*, 12 Pet. 448, 9 L. ed. 1137; *Van Brocklin v. Tennessee*, 117 U. S. 168, 6 S. Ct. 670, 29 L. ed. 845.

²³ *Pollard's Lessee v. Hagan*, 3 How. 212, 11 L. ed. 565.

²⁴ *American Ins. Co. v. Cotton*, 1 Pet. 543, 7 L. ed. 242.

²⁵ *Late Corporation etc. v. United States*, 136 U. S. 44, 10 S. Ct. 792, 34 L. ed. 478.

²⁶ *Shively v. Bowlby*, 152 U. S. 48, 14 S. Ct. 548, 38 L. ed. 331.

²⁷ *American Ins. Co. v. Cotton*, 1 Pet. 543, 7 L. ed. 242; *United States v. Gratiot*, 14 Pet. 526, 10 L. ed. 573; *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691; *Cross v. Harrison*, 16 How. 164, 14 L. ed. 889.

²⁸ *Miners' Bank v. Iowa*, 12 How. 7, 13 L. ed. 867.

²⁹ *Snow v. United States*, 18 Wall. 319, 21 L. ed. 784.

erned by or under the authority of Congress.³⁰ In legislating for the territories Congress exercises the combined powers of the federal and state governments,³¹ but while Congress has full dominion and sovereignty in this respect,³² yet in its legislation Congress is subject to those fundamental limitations in favor of personal rights formulated by the constitution and its amendments.³³ Congress may give jurisdiction to the territorial courts,³⁴ but in so doing it does not constitute such courts courts of the United States.³⁵

The constitution confers on the general government no power to establish or maintain colonies; but it may enlarge its territory by acquiring land to be governed by Congress until fit for admission into the Union as states.³⁶ A treaty of cession does not of itself operate to incorporate the ceded territory as part of the United States, and a provision in such a treaty that civil rights and political status shall be determined by Congress shows an express purpose to prevent incorporation.³⁷ The acceptance of a cession of territory does not, *ipso facto*, extend over such territory the provisions of the constitution guaranteeing trial by jury in criminal cases.³⁸

Alaska is one of the territories of the United States,³⁹ as also is Indian Territory.⁴⁰

³⁰ *National Bank v. County of Yankton*, 101 U. S. 133, 25 L. ed. 1046.

³¹ *American Ins. Co. v. Cotton*, 1 Pet. 543, 7 L. ed. 242.

³² *McAllister v. United States*, 141 U. S. 181, 11 S. Ct. 949, 35 L. ed. 693; *Utter v. Franklin*, 172 U. S. 423, 19 S. Ct. 183, 43 L. ed. 198; *Simms v. Simms*, 175 U. S. 168, 20 S. Ct. 58, 44 L. ed. 115.

³³ *Late Corporation etc. v. United States*, 136 U. S. 44, 10 S. Ct. 792, 34 L. ed. 478.

³⁴ *Sere v. Pitot*, 6 Cr. 332, 3 L. ed. 240; *Leitensdorfer v. Webb*, 20 How. 182, 15 L. ed. 891.

³⁵ *Hunt v. Palao*, 4 How. 589, 11 L. ed. 1115; *Clinton v. Englebrecht*, 13 Wall. 448, 20 L. ed. 659.

³⁶ *Dred Scott v. Sandford*, 19 How. 446, 15 L. ed. 691.

³⁷ *Downes v. Bidwell*, 182 U. S. 340, 21 S. Ct. 770, 45 L. ed. 1088.

³⁸ *Territory of Hawaii v. Mankichi*, 190 U. S. 197, 23 S. Ct. 787, 47 L. ed. 1016.

³⁹ *Steamer Coquitlam v. United States*, 163 U. S. 352, 16 S. Ct. 1117, 41 L. ed. 184.

⁴⁰ *The Cherokee Tobacco*, 11 Wall. 619, 20 L. ed. 227.

— Territorial Government.

Congress may govern the territories mediately or immediately, either by the creation of a territorial government or by the passage of laws directly operating on the territory.⁴¹ The power to establish territorial governments is implied from the necessity of protecting the rights of person and property beyond the limits of any state,⁴² and the form and extent of such government rests in the discretion of Congress within the definition and limitations of the federal constitution.⁴³ The extent of the power of self-government depends solely upon the organic act of Congress in each case, which is always subject to alteration by Congress.⁴⁴ The general practice in the formation of territorial governments is to leave to the inhabitants all powers of self-government consistent with the supremacy and supervision of the national government and with the fundamental principles established by Congress;⁴⁵ subject to these restrictions and the power of Congress to revoke and alter, the powers of territorial legislatures are as extensive as those exercised by any state legislature.⁴⁶

⁴¹ *Cohen v. Virginia*, 6 Wheat. 428, 5 L. ed. 257; *Miners' Bank v. Iowa*, 12 How. 7, 13 L. ed. 867; *Snow v. United States*, 18 Wall. 319, 21 L. ed. 784; *McAllister v. United States*, 141 U. S. 181, 11 S. Ct. 949, 35 L. ed. 693; *Utter v. Franklin*, 172 U. S. 423, 19 S. Ct. 183, 43 L. ed. 198; *Edwards v. Panama*, 1 Or. 418; *Lincoln etc. Min. Co. v. District Court*, 7 N. Mex. 502, 38 Pac. 585; *People v. Clayton*, 4 Utah, 432, 11 Pac. 210.

⁴² *United States v. Gratiot*, 14 Pet. 537, 10 L. ed. 573; *United States v. Railroad Bridge Co.*, 6 McLean, 517, Fed. Cas. No. 16,114; *State v. Navigation Co.*, 11 Mart. 309.

⁴³ *Dred Scott v. Sandford*, 19 How. 393, 15 L. ed. 691; *Ex parte Perkins*, 2 Cal. 424.

⁴⁴ *Snow v. United States*, 18 Wall. 320, 21 L. ed. 784; *Walker v. New Mexico etc. R. R. Co.*, 165 U. S. 604, 17 S. Ct. 421, 41 L. ed. 837; *United States v. McMillan*, 165 U. S. 511, 17 S. Ct. 395, 41 L. ed. 805.

⁴⁵ *Clinton v. Englebrecht*, 13 Wall. 441, 20 L. ed. 659; *Wilkerson v. Utah*, 99 U. S. 130, 25 L. ed. 345; *Walker v. New Mexico etc. R. R. Co.*, 165 U. S. 604, 17 S. Ct. 421, 41 L. ed. 837.

⁴⁶ *Hornbuckle v. Toombs*, 18 Wall. 655, 21 L. ed. 966; *Late Corporation etc. v. United States*, 136 U. S. 42-45, 10 S. Ct. 792, 34 L. ed. 478.

The act establishing and organizing a territory stands as its fundamental law or constitution,⁴⁷ and while that act confers the powers of government, the legislature remains the creature of Congress.⁴⁸ Upon the admission of a territory the authority of Congress ceases, but the legislature which is in session when the act of admission is passed may continue to discharge its duties until duly superseded.⁴⁹ An organic act vesting a territory with general legislative powers confers authority to charter corporations.⁵⁰ Where, however, the act permits the legislature to deal with all "rightful subjects" of legislation the courts are not precluded from determining the scope of the legislative authority as so defined.⁵¹ Where for twelve years Congress has taken no action regarding a law passed by a territorial legislature, it may be reasonably inferred that the law has the approval of Congress.⁵² A legislature may pass an act authorizing a judgment of an appeal bond against the sureties as well as the appellants.⁵³ The jurisdiction of their several courts may be determined by the territorial legislatures;⁵⁴ but a legislature has no power to deprive the supreme or district courts of chancery and common-law jurisdiction.⁵⁵ A territory may exempt from taxation lands granted by Congress in aid of a railroad.⁵⁶ Where the organic act confers only the power to "change" the location, it has been held that the legislature of a territory has no power to "fix" the location of the seat of government.⁵⁷

⁴⁷ *Ferris v. Higley*, 20 Wall. 380, 22 L. ed. 383; *National Bank v. County of Yankton*, 101 U. S. 133, 25 L. ed. 1046.

⁴⁸ *Treadway v. Schnauber*, 1 Dak. 236.

⁴⁹ *State v. Hitchcock*, 1 Kan. 178, 81 Am. Dec. 503.

⁵⁰ *Trustees for Vincennes University v. Indiana*, 14 How. 273, 14 L. ed. 416.

⁵¹ *Linford v. Ellison*, 155 U. S. 506, 15 S. Ct. 179, 39 L. ed. 239.

⁵² *Clinton v. Englebrecht*, 13 Wall. 446, 20 L. ed. 659; *Camou v. United States*, 171 U. S. 287, 18 S. Ct. 589, 43 L. ed. 163.

⁵³ *Beall v. New Mexico*, 16 Wall. 539, 21 L. ed. 292.

⁵⁴ *Clough v. Curtis*, 134 U. S. 368, 10 S. Ct. 573, 33 L. ed. 945.

⁵⁵ *Dunphy v. Kleinsmith*, 11 Wall. 614, 20 L. ed. 223.

⁵⁶ *McHenry v. Alford*, 168 U. S. 673, 18 S. Ct. 242, 42 L. ed. 614.

⁵⁷ *Seat of Government*, 1 Wash. Ter. 135.

The constitution is applicable to territory acquired by purchase or conquest only when and so far as Congress may direct; but when once the constitution has been formally extended to a territory, neither Congress nor the territorial legislature may enact laws inconsistent therewith.⁵⁸

⁵⁸ *Downes v. Bidwell*, 182 U. S. 271-279, 21 S. Ct. 770, 45 L. ed. 1088.

SECTION 4.

REPUBLICAN FORM OF GOVERNMENT GUARANTEED. PROTECTION
AGAINST INVASION.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

Construction.

The distinguishing feature of the republican form of government is the right of the people to choose their own officers for governmental administration and to pass their own laws; by virtue of the legislative power reposed in representative bodies and by the adoption of a constitution the people limit their own power as against the sudden impulses of mere majorities.¹

The "state" here referred to is a member of the Union,² an organized people, or a community of free citizens occupying a definite territory.³ The provision does not undertake to designate any particular government as republican, nor is the exact form in any manner especially indicated.⁴ Clearly, a permanent military government would not be such, but in certain emergencies the national government may interfere in the domestic concerns of a state, and the decisions of the political department as to the necessity of such interference are conclusive.⁵

¹ *In re Duncan*, 139 U. S. 461, 11 S. Ct. 373, 35 L. ed. 219.

² *Scott v. Jones*, 5 How. 377, 12 L. ed. 181; *Cherokee Nation v. Georgia*, 5 Pet. 18, 8 L. ed. 25.

³ *Texas v. White*, 7 Wall. 721, 19 L. ed. 227.

⁴ *Minor v. Happersett*, 21 Wall. 162, 22 L. ed. 627.

⁵ *Luther v. Borden*, 7 How. 42, 12 L. ed. 581.

And if public bodies not duly organized or admitted into the Union should attempt as states to enact laws encroaching on the powers of the United States, they could be suppressed by the power of the United States to put down insurrection, or by the ordinary penal laws of the states or territories in which they were situated.⁶

— Powers of Congress.

It is for Congress to determine what government is the established one in a state, and whether it is republican or not, and its decision in this respect is binding on every other department of government.⁷ Recognition of the authority of a state government, as well as its republican character, is necessarily implied from the admission of its senators and representatives to seats in Congress.⁸ Congress may delegate to the President the power to determine whether a government assuming to act as the state government is in fact such.⁹

The term "form of government" cast upon Congress the duty, upon the suppression of the Rebellion, to re-establish the broken relations of the states which seceded,¹⁰ and Congress was the only department of government authorized to reorganize and reconstruct the rebellious states.¹¹ In the exercise of this power a discretion as to the means is necessarily implied.¹² Congress may require that the new state constitution shall adopt any measure which the national government has power to enact and enforce,¹³ but the approval of such a constitution does not make

⁶ *Scott v. Jones*, 9 How. 343, 12 L. ed. 187. As to status of states in rebellion, see ante, p. 242.

⁷ *Luther v. Borden*, 7 How. 42, 12 L. ed. 581; *Texas v. White*, 7 Wall. 730, 19 L. ed. 227.

⁸ *United States v. Rhodes*, 1 Abb. U. S. 47, Fed. Cas. No. 16,151; *White v. Hart*, 13 Wall. 646, 20 L. ed. 685.

⁹ *Luther v. Borden*, 7 How. 44, 12 L. ed. 581; *Martin v. Mott*, 12 Wheat. 29, 6 L. ed. 537.

¹⁰ *Texas v. White*, 7 Wall. 727, 19 L. ed. 227.

¹¹ *Powell v. Boon*, 43 Ala. 469.

¹² *Texas v. White*, 7 Wall. 727, 19 L. ed. 227.

¹³ *Hardeman v. Downer*, 39 Ga. 425.

it an act of Congress.¹⁴ Where a rebellious state frames a new constitution which is approved by Congress such state is estopped to deny its binding force.¹⁵

¹⁴ *White v. Hart*, 13 Wall. 646, 20 L. ed. 685; *Marsh v. Burroughs*, 1 Woods, 463, Fed. Cas. No. 9112; *Homestead Cases*, 23 Gratt. 266, 12 Am. Rep. 507; *In re Kennedy*, 2 Rich. 116.

¹⁵ *White v. Hart*, 13 Wall. 646, 20 L. ed. 685.

ARTICLE V.

MANNER OF MAKING AMENDMENTS TO CONSTITUTION.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

The people made the constitution and may unmake it; but this power to unmake resides in the whole body of the people, not in any subdivision of them,¹ and no limit can be imposed upon the people in their sovereign capacity in this respect.² The people of the states are the constituency of the federal and state governments, and they may alter the constitution of either.³

The President's approval to a proposed amendment is not required by article I, section 7, clause 3, declaring that every

¹ *Cohens v. Virginia*, 6 Wheat. 389, 5 L. ed. 257; *Wanser v. Hoos*, 60 N. J. L. 525, 64 Am. St. Rep. 602, 38 Atl. 450.

² *Ex parte Griffin*, 25 Tex. Supp. 623.

³ *Spooner v. McConnell*, 1 McLean, 337, Fed. Cas. No. 13,245.

order, resolution, or vote to which the concurrence of the Senate and House of Representatives shall be necessary shall be presented to the President for his approval.⁴

All of the amendments proposed by the first session of Congress, consisting of the first ten, were intended to apply only to the federal government, and not as restrictions on the state governments.⁵ They were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities inherited from our English ancestors and from time immemorial.⁶

⁴ *Hollingsworth v. Virginia*, 3 Dall. 381, 1 L. ed. 644; *State ex rel. v. Secretary of State*, 43 La. Ann. 655, 9 South. 798.

⁵ *Barron v. Mayor of Baltimore*, 7 Pet. 247, 8 L. ed. 672; *Livingston's Lessee v. Moore*, 7 Pet. 551, 8 L. ed. 751; *Fox v. Ohio*, 5 How. 434, 12 L. ed. 213; *Smith v. Maryland*, 18 How. 76, 15 L. ed. 269; *Withers v. Buckley*, 20 How. 90, 15 L. ed. 816; *Legal Tender Cases*, 12 Wall. 535, 20 L. ed. 287; *Justices v. Murray*, 9 Wall. 278, 19 L. ed. 658; *North Missouri R. R. Co. v. McGuire*, 20 Wall. 46, 22 L. ed. 287, affirming 49 Mo. 490, 8 Am. Rep. 141; *Twitchell v. Commonwealth*, 7 Wall. 325, 19 L. ed. 223; *Pervear v. Commonwealth*, 5 Wall. 479, 18 L. ed. 608; *United States v. Cruikshank*, 92 U. S. 552, 23 L. ed. 588; *Spies v. Illinois*, 123 U. S. 166, 8 S. Ct. 21, 31 L. ed. 80; *McElvaine v. Brush*, 142 U. S. 158, 12 S. Ct. 156, 35 L. ed. 971; *Thorington v. Montgomery*, 147 U. S. 492, 13 S. Ct. 394, 37 L. ed. 252; *Brown v. New Jersey*, 175 U. S. 174, 20 S. Ct. 77, 44 L. ed. 119; *Boring v. Williams*, 17 Ala. 516; *Noles v. State*, 24 Ala. 691; *Fife v. State*, 31 Ark. 458, 25 Am. Rep. 558; *Cairo etc. R. R. Co. v. Turner*, 31 Ark. 499, 25 Am. Rep. 567; *Ryan v. People*, 21 Colo. 122, 40 Pac. 776; *Colt v. Eves*, 12 Conn. 252; *State v. Boswell*, 104 Ind. 542, 4 N. E. 676; *State v. Barnett*, 3 Kan. 253, 87 Am. Dec. 472; *Trombley v. Humphrey*, 23 Mich. 482, 9 Am. Rep. 102; *Martin v. Dix*, 52 Miss. 58, 24 Am. Rep. 663; *Bohanon v. State*, 18 Neb. 77, 53 Am. Rep. 806, 24 N. W. 399; *Eldridge v. Binghamton*, 120 N. Y. 313, 24 N. E. 463; *Livingston v. Mayor*, 8 Wend. 85, 22 Am. Dec. 622.

⁶ *Robertson v. Baldwin*, 165 U. S. 281, 17 S. Ct. 326, 41 L. ed. 715.

ARTICLE VI.

GENERAL PROVISIONS.

1. Debts. Existing obligations ratified.
2. Supreme law of the land.
3. Oath to support Constitution. No religious test.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This clause was an express assumption of the debts incurred under the Articles of Confederation.¹

¹ *Terrett v. Taylor*, 9 Cr. 50, 3 L. ed. 650; *Kelly v. Harrison*, 2 Johns. Cas. 29; *Jackson v. Lamphire*, 3 Johns. Cas. 109.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Supremacy of the Constitution.

The constitution of the United States was formed mainly to secure union and harmony, and for this purpose it was necessary that in the sphere of action assigned to the national government it should be supreme;¹ it was intended to frame a paramount government, sovereign in its sphere, as distinguished from a league or compact.² To this end it was necessary to make the constitution the paramount law of the land.³ The constitution is supreme over all the departments of the national government, legislative, executive and judicial, and, to the extent of the powers delegated therein, over all who made themselves parties to it, states as well as persons. Nor does its supremacy end there; it is supreme over the people of the United States aggregately and in their separate sovereignties.⁴ The constitution, treaties, and general laws made by the general government on the rights, duties, and subjects specially enumerated and confided to their jurisdiction are exclusive and supreme, as well by necessary implication as by express provision.⁵ The Ordi-

¹ *Martin v. Hunter*, 1 Wheat. 363, 4 L. ed. 97; *Dobbins v. Commissioners of Erie Co.*, 10 Pet. 447, 10 L. ed. 1022; *Ableman v. Booth*, 21 How. 517, 16 L. ed. 169; *Kohl v. United States*, 91 U. S. 372, 23 L. ed. 449; *In re Debs*, 158 U. S. 578, 15 S. Ct. 900, 39 L. ed. 1092; *United States v. Rhodes*, 1 Abb. U. S. 44, Fed. Cas. No. 16,151.

² *Legal Tender Cases*, 12 Wall. 533, 20 L. ed. 287; *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579.

³ *Prigg v. Commonwealth*, 16 Pet. 628, 10 L. ed. 1060; *New Jersey v. Wilson*, 7 Cr. 164, 3 L. ed. 303; *Terrett v. Taylor*, 9 Cr. 43, 3 L. ed. 650; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Taylor v. Taintor*, 16 Wall. 366, 21 L. ed. 287; *In re Bomaine*, 23 Cal. 585.

⁴ *Dodge v. Woolsey*, 18 How. 347, 15 L. ed. 401.

⁵ *Dodge v. Woolsey*, 18 How. 331, 15 L. ed. 401; *Farmers' etc.*

nance of 1787 is to be considered as part of the supreme law of the land within this clause.⁶

This provision operates to make the government of the United States and that of the states parts of the same system,⁷ and to make the federal constitution a part of the organic law of each state.⁸ So, also, the laws enacted in conformity with the constitution are made part of the law of each state and are binding upon the state authorities and people.⁹ In all branches of government, both state and national, however, the powers of government are limited and defined;¹⁰ but the limitations and implied prohibitions in the constitution must not be extended so far as to destroy the necessary powers of the state or prevent their efficient exercise,¹¹ the general principles in the constitution being merely declaratory and directory and not intended to fetter and control.¹² The federal constitution cannot become weakened by a particular course of inaction under it.¹³

From the supremacy of the constitution and laws of the United States it necessarily results that the interpretation of the constitution and laws by the highest tribunal created by the constitution must be equally supreme over the constitution and laws of the several states.¹⁴ The laws of the United States are supreme within the meaning of this clause only when made

Bank v. Dearing, 91 U. S. 29, 23 L. ed. 196; *Farrington v. Tennessee*, 95 U. S. 685, 24 L. ed. 558; *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 1, 24 L. ed. 708; *Sim's Case*, 7 Cush. 729; *United States v. Rhodes*, 1 Abb. U. S. 44, Fed. Cas. No. 16,151.

⁶ *Pollard v. Kibbe*, 14 Pet. 417, 10 L. ed. 490.

⁷ *Stearns v. United States*, 2 Paine, 300, Fed. Cas. No. 13,341; *Gilmer v. Lime Point*, 18 Cal. 229.

⁸ *Taylor v. Taintor*, 16 Wall. 366, 21 L. ed. 287; *In re Romaine*, 23 Cal. 585.

⁹ *Farmers' etc. Bank v. Dearing*, 91 U. S. 35, 23 L. ed. 196.

¹⁰ *Loan Assn. v. Topeka*, 20 Wall. 663, 22 L. ed. 455.

¹¹ *Railroad Co. v. Peniston*, 18 Wall. 31, 21 L. ed. 787.

¹² *Cooper v. Telfair*, 4 Dall. 18, 1 L. ed. 721.

¹³ *Pollock v. Farmers' Loan etc. Co.*, 158 U. S. 629, 15 S. E. 912, 39 L. ed. 1108.

¹⁴ *Warner v. The Uncle Sam*, 9 Cal. 697.

in conformity with the constitution.¹⁵ and an act of Congress repugnant to the constitution is void.¹⁶

While the presumption is always in favor of the constitutionality of a legislative act,¹⁷ and the power to declare a statute void will never be exercised except in a very clear case;¹⁸ yet it is not only the right, but the duty, of the judiciary to pass upon the validity of statutes and to declare them void when their repugnancy to the constitution is apparent.¹⁹ The law of a state, although enacted in the exercise of a power not controverted, if it interferes with any valid law of Congress must yield to the latter.²⁰

¹⁵ *Marbury v. Madison*, 1 Cr. 176, 2 L. ed. 60; *Pollock v. Farmers' Loan etc. Co.*, 157 U. S. 554, 15 S. Ct. 679, 39 L. ed. 759; *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596; *Ex parte Selma etc. R. R. Co.*, 45 Ala. 728, 6 Am. Rep. 727; *Rison v. Farr*, 24 Ark. 168, 37 Am. Dec. 56; *Koehler v. Iowa*, 60 Iowa, 656, 15 N. W. 635.

¹⁶ *Marbury v. Madison*, 1 Cr. 176, 2 L. ed. 60; *Ableman v. Booth*, 21 How. 520, 16 L. ed. 169.

¹⁷ *Ogden v. Saunders*, 12 Wheat. 270, 6 L. ed. 606; *Legal Tender Cases*, 12 Wall. 531, 20 L. ed. 287; *Brown v. Maryland*, 12 Wheat. 436, 6 L. ed. 678; *Butler v. Pennsylvania*, 10 How. 415, 13 L. ed. 472; *Von Hoffman v. Quincy*, 4 Wall. 549, 18 L. ed. 403; *United States v. Harris*, 106 U. S. 635, 1 S. Ct. 601, 27 L. ed. 290; *Hooper v. California*, 155 U. S. 657, 15 S. Ct. 207, 39 L. ed. 297; *Chesapeake etc. Tel. Co. v. Manning*, 186 U. S. 245, 22 S. Ct. 881, 46 L. ed. 1144.

¹⁸ *Hylton v. United States*, 3 Dall. 175, 1 L. ed. 556; *Calder v. Bull*, 3 Dall. 395, 1 L. ed. 648; *Hepburn v. Griswold*, 8 Wall. 610, 19 L. ed. 513; *Livingston v. Darlington*, 101 U. S. 410, 25 L. ed. 1015; *Fairbank v. United States*, 181 U. S. 285, 21 S. Ct. 648, 45 L. ed. 862; *Niagara Fire Ins. Co. v. Cornell*, 110 Fed. 816.

¹⁹ *Marbury v. Madison*, 1 Cr. 176-180, 2 L. ed. 60; *Mugler v. Kansas*, 123 U. S. 661, 8 S. Ct. 297, 31 L. ed. 205; *McCulloch v. Brown*, 41 S. C. 243, 19 S. E. 471, 23 L. R. A. 410; *In re Jacobs*, 98 N. Y. 112, 50 Am. Rep. 645.

²⁰ *Gibbons v. Ogden*, 9 Wheat. 204, 6 L. ed. 23; *New York v. Miln*, 11 Pet. 137, 9 L. ed. 648; *Passenger Cases*, 7 How. 533, 12 L. ed. 702; *Foster v. New Orleans*, 94 U. S. 247, 24 L. ed. 122; *Walling v. Michigan*, 116 U. S. 455, 6 S. Ct. 457, 29 L. ed. 691; *Higgins v. Lime*, 130 Mass. 13; *State v. Cutshall*, 110 N. C. 549, 15 S. E. 264, 16 L. R. A. 130.

Treaty as Supreme Law.*

A treaty is a solemn agreement between nations.²¹ The words "treaty" and "nation," however, are words of our own language, and have been applied to Indian tribes, thus treating such tribes as distinct political communities.²² It binds the nation in the aggregate and all its subordinate authorities and judges, state as well as federal.²³

When duly ratified, a treaty becomes, under this clause, the supreme law of the land.²⁴ A treaty is in the nature of a contract, but in the United States it is something more; it is like an act of Congress of which the courts must take judicial notice,²⁵ and it constitutes a rule of decision in all courts.²⁶ The courts are empowered to administer a treaty according to its terms, but they cannot annul or disregard any of those terms.²⁷ When the terms of a stipulation import a contract, a treaty

²¹ *Foster v. Neilson*, 2 Pet. 314, 7 L. ed. 415; *Tucker v. Alexandroff*, 183 U. S. 424, 22 S. Ct. 195, 46 L. ed. 264; *Worcester v. Georgia*, 6 Pet. 515, 8 L. ed. 483; *Taylor v. Morton*, 2 Curt. 454, Fed. Cas. No. 13,799.

²² *Worcester v. Georgia*, 6 Pet. 556, 559, 8 L. ed. 483; *United States v. Forty-three Gallons of Whisky*, 93 U. S. 196, 23 L. ed. 846; *Talton v. Mayes*, 163 U. S. 383, 16 S. Ct. 989, 41 L. ed. 196; *Roff v. Burnlery*, 168 U. S. 21, 18 S. Ct. 61, 42 L. ed. 442; *United States v. Payne*, 2 McCrary, 295, 8 Fed. 888; *In re Race Horse*, 70 Fed. 607.

²³ *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *Marbury v. Madison*, 1 Cr. 176, 2 L. ed. 60; *Worcester v. Georgia*, 6 Pet. 575, 8 L. ed. 483; *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 648; *Owings v. Norwood*, 5 Cr. 348, 3 L. ed. 120; *Satterlee v. Matthewson*, 2 Pet. 413, 7 L. ed. 458; *Ex parte Garland*, 4 Wall. 399, 18 L. ed. 366; *Cummings v. Missouri*, 4 Wall. 329, 18 L. ed. 356; *Fellows v. Denniston*, 23 N. Y. 420.

²⁴ *Fairfax v. Hunter*, 7 Cr. 627, 3 L. ed. 453; *American Ins. Co. v. Cotton*, 1 Pet. 543, 7 L. ed. 242; *Pollard v. Kibbe*, 14 Pet. 412, 10 L. ed. 490; *Doe v. Braden*, 16 How. 635, 14 L. ed. 1090; *Chew Heong v. United States*, 112 U. S. 540, 5 S. Ct. 255, 28 L. ed. 770; *In re Cooper*, 143 U. S. 502, 12 S. Ct. 453, 36 L. ed. 232.

²⁵ *United States v. Rauscher*, 119 U. S. 418, 7 S. Ct. 234, 30 L. ed. 425.

²⁶ *Strother v. Lucas*, 12 Pet. 439, 9 L. ed. 1137.

²⁷ *Doe v. Braden*, 16 How. 657, 14 L. ed. 1090; *Chew Heong v. United States*, 112 U. S. 540, 5 S. Ct. 255, 28 L. ed. 770.

*Lodgment of treaty-making power, see ante, p. 481.

addresses itself to the political, and not to the judicial department, and Congress must execute it before it becomes a rule of court.²⁸ After a treaty is executed and ratified, the courts cannot go behind it for the purpose of annulling its operation.²⁹ The courts, both federal and state, are bound to hold a state constitution or law contrary to a treaty null and void.³⁰

A treaty is to be regarded as equivalent to an act of Congress whenever it operates of itself, without the aid of any legislative provisions; and where a treaty and an act of Congress are in conflict, the latest in date must prevail.³¹ This clause was not intended to operate to give treaties precedence over acts of Congress, or vice versa; a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty,³² and any law contained in a treaty may be repealed by Congress when it relates to subjects placed under the legislative power.³³ Whether an act of Congress shall prevail over

²⁸ *Foster v. Neilson*, 2 Pet. 314, 7 L. ed. 415; *United States v. Ferreira*, 13 How. 40, 14 L. ed. 42; *Turner v. Missionary Union*, 5 McLean, 344, Fed. Cas. No. 14,251; *Taylor v. Morton*, 2 Curt. 454, Fed. Cas. No. 13,799; *In re Metzger*, 1 Park. C. C. 108.

²⁹ *Fellows v. Blacksmith*, 19 How. 372, 15 L. ed. 684; *Holden v. Joy*, 17 Wall. 242, 21 L. ed. 523; *United States v. New York Indians*, 173 U. S. 469, 19 S. Ct. 490, 43 L. ed. 769.

³⁰ *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *Society for Propagation of Gospel v. New Haven*, 8 Wheat. 492, 5 L. ed. 662.

³¹ *Foster v. Neilson*, 2 Pet. 314, 7 L. ed. 415; *United States v. Arredondo*, 6 Pet. 691, 8 L. ed. 547; *United States v. Percheman*, 7 Pet. 51, 8 L. ed. 604; *Gordon v. Kerr*, 1 Wash. C. C. 322, Fed. Cas. No. 5611.

³² *The Cherokee Tobacco*, 11 Wall. 621, 20 L. ed. 227; *Whitney v. Robertson*, 124 U. S. 194, 8 S. Ct. 456, 31 L. ed. 386; *Botiller v. Dominguez*, 130 U. S. 247, 9 S. Ct. 525, 32 L. ed. 926; *Horner v. United States*, 143 U. S. 578, 12 S. Ct. 522, 36 L. ed. 266; *Fong Yue Ting v. United States*, 149 U. S. 720, 13 S. Ct. 1016, 37 L. ed. 905; *Stephens v. Cherokee Nation*, 174 U. S. 483, 19 S. Ct. 722, 43 L. ed. 1041; *United States v. Lee Yen Tai*, 185 U. S. 220, 22 S. Ct. 629, 46 L. ed. 878.

³³ *Talbot v. Seaman*, 1 Cr. 1, 2 L. ed. 15; *Ware v. Hylton*, 3 Dall. 199, 1 L. ed. 568; *United States v. Tobacco Factory*, 1 Dill. 266, Fed. Cas. No. 16,528; *Webster v. Reid*, 11 How. 437, 13 L. ed. 761; *Ropes v. Clinch*, 8 Blatchf. 304, Fed. Cas. No. 12,041; *Taylor v. Morton*, 2 Curt. 454, Fed. Cas. No. 13,799; *Dred Scott v. Sandford*, 19 How. 629, 15 L. ed. 691.

a treaty is purely a question of municipal law as distinguished from public law.³⁴

In declaring that treaties shall be the supreme law of the land, this provision presupposes a treaty which has been made pursuant to that authority which has been conferred upon the treaty-making department, and in relation to subjects over which the department has jurisdiction.³⁵ A treaty in violation of the constitution cannot be upheld as the law of the land,³⁶ for what cannot be enacted into statutes by Congress cannot be done by treaty.³⁷ Nor can a right be incident to one department of the government which necessarily goes to the suspension of a right incident to another under the constitution.³⁸ The validity of a treaty is necessary and voluntary; the necessary validity being of a judicial nature and the voluntary of a political nature.³⁹ As in the case of an act of Congress, the supreme court will declare a treaty void only in a clear case.⁴⁰

³⁴ *Taylor v. Morton*, 2 Curt. 454, Fed. Cas. No. 13,799.

³⁵ *People v. Naglee*, 1 Cal. 231, 52 Am. Dec. 312.

³⁶ *License Cases*, 5 How. 613, 12 L. ed. 256; *The Cherokee Tobacco*, 11 Wall. 620, 20 L. ed. 227.

³⁷ *The Cherokee Tobacco*, 11 Wall. 620, 20 L. ed. 227; *United States v. Rhodes*, 1 Abb. U. S. 43, Fed. Cas. No. 16,151; *People v. Washington*, 36 Cal. 658.

³⁸ *Taylor v. Morton*, 2 Curt. 454, Fed. Cas. No. 13,799; *Jones v. Walker*, 2 Paine, 688, Fed. Cas. No. 7507; *Wilson v. Wall*, 34 Ala. 288.

³⁹ *Jones v. Walker*, 2 Paine, 688, Fed. Cas. No. 7507.

⁴⁰ *Ware v. Hylton*, 3 Dall. 237, 1 L. ed. 568.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

The pledge required by this clause is to support this constitution—the constitution of the United States.¹ The legislature is not restricted to the oath or affirmation here prescribed; it may add thereto any other oath of office its wisdom may suggest.² Congress may not, however, prescribe a test-oath as a qualification for holding office, such an act being, in effect, an *ex post facto* law,³ and this is equally true of the state governments.⁴ A referee is not such an officer as is required to take this oath.⁵ It has been directly held in a state court that this provision is merely directory, and the omission to take the oath does not affect the validity of the officer's acts.⁶

Congress held in some of the earlier contested election cases that the failure of election officers to take the prescribed oath was ground for excluding a member-elect from his seat;⁷ but the ruling has been otherwise in later cases.⁸

¹ *Ableman v. Booth*, 21 How. 525, 16 L. ed. 169.

² *McCulloch v. Maryland*, 4 Wheat. 416, 4 L. ed. 579; *United States v. Rhodes*, 1 Abb. U. S. 43, Fed. Cas. No. 16,151.

³ *Ex parte Garland*, 4 Wall. 377, 18 L. ed. 366.

⁴ *Cummings v. Missouri*, 4 Wall. 323, 18 L. ed. 356.

⁵ *Underwood v. McDuffee*, 15 Mich. 361, 93 Am. Dec. 194.

⁶ *Hill v. Boyland*, 40 Miss. 618. But see *Thomas v. Taylor*, 42 Miss. 651, 2 Am. Rep. 625; *White v. McKee*, 19 La. Ann. 111.

⁷ *McFarland v. Culpepper*, Cl. & H. 221; *Easton v. Scott*, Cl. & H. 276; *Draper v. Johnston*, Cl. & H. 710, 712.

⁸ *Finley v. Bisbee*, 1 Ells. 99; *McGinnis v. Alderson*, Rowell, 638; *Smith v. Jackson*, Rowell, 21; *Goode v. Epes*, 53d Cong. Rep. 1952, p. 8.

ARTICLE VII.

RATIFICATION OF CONSTITUTION.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

The constitution went into effect March 3, 1789.¹

It was ratified by the several States in the following order: Delaware, December 7th, 1787; Pennsylvania, December 12th, 1787; New Jersey, December 18th, 1787; Georgia, January 2nd, 1788; Connecticut, January 9th, 1788; Massachusetts, February 6th, 1788; Maryland, April 28th, 1788; South Carolina, May 23rd, 1788; New Hampshire, June 21st, 1788; Virginia, June 26th, 1788; New York, July 26th, 1788; North Carolina, November 21st, 1789; and Rhode Island, May 29th, 1790.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

¹ Owings v. Speed, 5 Wheat. 423, 5 L. ed. 124; United States v. New Bedford Bridge, 1 Wood. & M. 430, Fed. Cas. No. 15,867.

New Hampshire.

John Langdon,
Nicholas Gilman.

Connecticut.

Wm. Samuel Johnson,
Roger Sherman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

New York.

Alexander Hamilton.

New Jersey.

William Livingston,
David Brearley,
William Paterson,
Jonathan Dayton.

Maryland.

James McHenry,
Daniel, of St. Tho. Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, Jr.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimmons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

North Carolina.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South Carolina.

John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

Delaware.

George Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jacob Broom.

Georgia.

William Few,
Abraham Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF THE FIFTH ARTICLE.

ARTICLE I.

RELIGIOUS LIBERTY—FREEDOM OF SPEECH—RIGHT OF PETITION.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

Religion.

This amendment was intended to operate on the national government alone; it does not restrict the powers of the states.¹ The constitutional guaranty of religious freedom limits only congressional legislation.² It takes from Congress the power to legislate with respect to mere religious opinion and belief, but leaves it free to act as to the violation of social duties, and as to peace and good order.³ The exercise of religious privi-

¹ *Permoli v. First Municipality*, 3 How. 609, 11 L. ed. 739; *Fox v. Ohio*, 5 How. 410, 12 L. ed. 213; *Ex parte Garland*, 4 Wall. 399, 18 L. ed. 366; *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588.

² *Barron v. Baltimore*, 7 Pet. 243, 8 L. ed. 672; *Withers v. Buckley*, 20 How. 84, 15 L. ed. 816; *United States v. Rhodes*, 1 Abb. U. S. 43, Fed. Cas. No. 16,151; *Murphy v. People*, 2 Cow. 815.

³ *Reynolds v. United States*, 98 U. S. 145, 25 L. ed. 244.

leges must be subordinate to criminal laws,^{3a} and as bigamy and polygamy are crimes under the laws of all Christian countries, this amendment cannot be invoked to defeat legislation for their punishment.⁴ Nor is a "sense of religious duty" a defense to an action for disturbing the peace.⁵

This amendment and the clause in article VI, providing that "no religious test shall ever be required as a qualification to any office," are the only provisions in the federal constitution upon the subject of religion, the whole power over the subject being left with the states.⁶ The states have power to enact "Sunday laws,"⁷ and a violation of such laws is not excused by religious belief.⁸

Freedom of Speech and of Press.

The constitutional guaranty of "freedom of the press" is simply intended to secure to the conductors of the press the same rights and immunities, and such only, as are enjoyed by the public at large;⁹ it cannot operate to give to them any immunity from prosecution which an individual would not have under like circumstances.¹⁰ While freedom of circulation is essential to freedom of the press,¹¹ yet in excluding objectionable matter from the mails Congress does not interfere with that freedom.¹²

^{3a} *Davis v. Beason*, 133 U. S. 342, 343, 10 S. Ct. 299, 33 L. ed. 637.

⁴ *United States v. Reynolds*, 98 U. S. 145, 25 L. ed. 244; *Davis v. Beason*, 133 U. S. 342, 10 S. Ct. 299, 33 L. ed. 637.

⁵ *Commonwealth v. Plaisted*, 148 Mass. 381, 12 Am. St. Rep. 569, 19 N. E. 226, 2 L. R. A. 142; *State v. White*, 64 N. H. 49, 5 Atl. 829.

⁶ *Ex parte Garland*, 4 Wall. 397, 18 L. ed. 366; *Permoli v. First Municipality*, 3 How. 609, 11 L. ed. 739.

⁷ *Hennington v. Georgia*, 163 U. S. 304, 13 S. Ct. 1086, 41 L. ed. 166; *Commonwealth v. Has*, 122 Mass. 42; *Specht v. Commonwealth*, 8 Pa. St. 312, 49 Am. Dec. 518; *Frolickstein v. Mobile*, 40 Ala. 725; *Ex parte Andrews*, 18 Cal. 678; *Neuendorff v. Duryea*, 69 N. Y. 557, 25 Am. Rep. 235.

⁸ *Scales v. State*, 47 Ark. 485, 58 Am. Rep. 772, 1 S. W. 772.

⁹ *Riley v. Lee*, 88 Ky. 603, 21 Am. St. Rep. 358, 11 S. W. 713.

¹⁰ *Park v. Detroit Free Press Co.*, 72 Mich. 560, 16 Am. St. Rep. 544, 40 N. W. 731, 1 L. R. A. 599,

¹¹ *Ex parte Jackson*, 96 U. S. 735, 24 L. ed. 877.

¹² *Ex parte Jackson*, 96 U. S. 735, 24 L. ed. 877; *In re Rapier*, 143 U. S. 134, 12 S. Ct. 374, 36 L. ed. 93.

Right of Assembly.

The right to assemble peaceably for the purpose of petitioning Congress, or for anything else connected with the powers or duties of the government, is an attribute of national citizenship, and protected by the constitution.¹³ These rights existed long before the constitution, however; this amendment merely prohibits their abridgment.¹⁴ Congress has no power to punish the disturbance of public assemblies of peaceable citizens; such legislation belongs to the police power of the states.¹⁵

¹³ *United States v. Cruikshank*, 92 U. S. 552, 23 L. ed. 588; *In re Quarles*, 158 U. S. 535, 15 S. Ct. 959, 39 L. ed. 1080.

¹⁴ *United States v. Cruikshank*, 92 U. S. 552, 23 L. ed. 588.

¹⁵ *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588.

ARTICLE II.

RIGHT TO BEAR ARMS.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

The right to bear arms for all lawful purposes is not a right granted by the constitution; the right is recognized as existing, and is merely protected by this clause from infringement.¹ Even in this, however, the right is protected only from infringement by Congress;² the amendment does not restrict the right of the states to regulate the subject in the exercise of its police power, as by a law prohibiting the carrying of concealed weapons,³ or a law prescribing the punishment for an assault with a dangerous weapon.⁴ The power of the states in this respect is subject only to the power of Congress to organize and provide for a militia.⁵

¹ *United States v. Cruikshank*, 92 U. S. 553, 23 L. ed. 588.

² *United States v. Cruikshank*, 92 U. S. 553, 23 L. ed. 588; *North Carolina v. Newsom*, 5 Ired. 250; *Andrews v. State*, 3 Heisk. 165, 8 Am. Rep. 8; *Fife v. State*, 31 Ark. 455, 25 Am. Rep. 556.

³ *Chatteaux v. State*, 52 Ala. 388; *State v. Buzzard*, 4 Ark. 18; *Fife v. State*, 31 Ark. 455, 25 Am. Rep. 556; *Nunn v. State*, 1 Ga. 243; *Louisiana v. Chandler*, 5 La. Ann. 489; *Louisiana v. Smith*, 11 La. Ann. 633; *Louisiana v. Jumel*, 18 La. Ann. 399; *English v. State*, 35 Tex. 473, 14 Am. Rep. 374; *Hopkins v. Commonwealth*, 3 Bush, 481; *State v. Wilforth*, 74 Mo. 528; *Dunne v. People*, 94 Ill. 120; *State v. Reid*, 1 Ala. 612, 35 Am. Dec. 44. But see *Bliss v. Commonwealth*, 2 Litt. 99, 13 Am. Dec. 251.

⁴ *Cockran v. State*, 24 Tex. 394. And see *New York v. Miln*, 11 Pet. 139, 9 L. ed. 648.

⁵ *Dunne v. People*, 94 Ill. 120.

The right to parade with arms is not a federal right, and a state law prohibiting bodies of men to so parade violates no right secured by the United States constitution.⁶ This amendment is based upon the idea that a people cannot be oppressed or enslaved who are not first disarmed.⁷

It has been held in a state case that a statute prohibiting the bearing of arms openly is unconstitutional.⁸

⁶ *Presser v. Illinois*, 116 U. S. 264, 266, 6 S. Ct. 580, 29 L. ed. 615; *Commonwealth v. Murphy*, 166 Mass. 172, 44 N. E. 138, 32 L. R. A. 606.

⁷ *Cockran v. State*, 24 Tex. 401.

⁸ *Nunn v. State*, 1 Ga. 243.

ARTICLE III.

QUARTERING OF SOLDIERS.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

ARTICLE IV.

UNREASONABLE SEARCHES, SEIZURES, AND WARRANTS
PROHIBITED.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

Searches and Seizures.

This amendment was adopted with intent to restrict and limit the powers of the United States; it was designed to guard against abuses under the guise of law, and has reference only to proceedings in the federal courts.¹ It places the judicial power under strong prohibitions and checks.² This protection of the right of the people to be secure in their persons, houses, papers and effects was such as wisdom and experience demonstrated to be necessary.³ It extends only to those who are parties to the constitution.⁴ The rule that the amendment contemplates only criminal prosecutions,⁵ is subject to some qualification; it applies as well to suits for penalties and forfeitures under the revenue laws,⁶ and it has been held that a railway

¹ *Luther v. Borden*, 7 How. 66, 12 L. ed. 581; *Smith v. Maryland*, 18 How. 76, 15 L. ed. 269.

² *Green v. Biddle*, 3 Smedes & M. 673.

³ *Ex parte Milligan*, 4 Wall. 120, 18 L. ed. 281.

⁴ *Commonwealth v. Griffith*, 19 Mass. 11.

⁵ *Ex parte Meador*, 1 Abb. U. S. 317, Fed. Cas. No. 9375; *Murray v. Hoboken etc. Co.*, 18 How. 272, 15 L. ed. 372.

⁶ *Boyd v. United States*, 116 U. S. 632, 6 S. Ct. 524, 29 L. ed. 746.

commission cannot compel the production of private papers of railroad officials.⁷ A statute declaring that allegations sought to be proved by private papers, in a suit for a penalty, shall be deemed confessed if the party refuses to produce them, is equivalent to a search and seizure under this amendment, and is void.⁸

The amendment does not prohibit a search and seizure made in attempting to execute a military order,⁹ but an order of arrest made by the War Department without warrant is void.¹⁰ The prohibition is not applicable to proceedings for the recovery of debts.¹¹

— Warrant.

"And no warrants shall issue but on probable cause" refers only to process issued under the authority of the United States.¹² A warrant of commitment which does not state some good cause certain, supported by an oath, is illegal;¹³ but an executive officer may justify his acts by showing a regular warrant without showing that it was founded upon a complaint under oath; it is only necessary that the order or precept shall be lawful on its face.¹⁴ The name bestowed upon process cannot affect its constitutional validity; so a warrant of distress against a revenue officer is not a search-warrant requiring a supporting affidavit.¹⁵ A warrant directing a search in the

⁷ *In re Pacific Railway Commission*, 12 Saw. 579, 32 Fed. 254.

⁸ *Boyd v. United States*, 116 U. S. 621, 6 S. Ct. 524, 29 L. ed. 746. And see *In re Conington*, 36 Fed. 362.

⁹ *Allen v. Colby*, 47 N. H. 544.

¹⁰ *Ex parte Field*, 5 Blatchf. 63.

¹¹ *Ex parte Burford*, 3 Cr. 448, 2 L. ed. 495; *Murray v. Hoboken Land Co.*, 18 How. 272, 15 L. ed. 372; *Ex parte Milligan*, 4 Wall. 119, 18 L. ed. 281; *Wakely v. Hart*, 6 Binn. 316; *Bell v. Clapp*, 10 Johns. 263, 6 Am. Dec. 339; *Sailey v. Smith*, 11 Johns. 500.

¹² *Smith v. Maryland*, 18 How. 71, 15 L. ed. 269; *State v. Bradley*, 26 Fed. 290; *Weimer v. Bunbury*, 3 Mich. 208; *State v. Aiken*, 42 S. C. 248, 20 S. E. 231, 26 L. R. A. 345.

¹³ *Ex parte Burford*, 3 Cr. 448, 2 L. ed. 495; *Anonymous*, 2 Opin. Atty. Gen. 266.

¹⁴ *Sanford v. Nichols*, 13 Mass. 286.

¹⁵ *Den v. Hoboken Land Co.*, 18 How. 285, 15 L. ed. 372.

house of "A. & Co.," will not justify a search in the house of "A."¹⁶ A specification of the character, quality, number, weight, or other circumstances which will serve to distinguish the object to be searched for, is necessary.¹⁷

A doubt concerning the construction of a law providing for seizure may authorize a certificate of probable cause.¹⁸ Whatever the probable cause, however, the facts necessary to constitute it must appear upon oath or affirmation.¹⁹ An affidavit based upon information furnished by others is not probable cause sufficient for a warrant; the oath of the real accuser is required.²⁰ The constitutional guaranty extends to letters and packages sealed and deposited in the mails, and they can be opened only under a warrant like that issued when papers in one's household are subjected to search.²¹ Prescriptions required to be kept by druggists are declared not to be private papers protected from seizure under a similar provision in a state constitution.²²

¹⁶ *Sanford v. Nichols*, 13 Mass. 296.

¹⁷ *Sanford v. Nichols*, 13 Mass. 286.

¹⁸ *United States v. Biddle*, 5 Cr. 313, 3 L. ed. 110.

¹⁹ *Ex parte Bollman*, 4 Cr. 75, 2 L. ed. 554; *In re Coleman*, 15 Blatchf. 406, Fed. Cas. No. 2980.

²⁰ *In re Rule of Court*, 3 Woods, 502, Fed. Cas. No. 12,126.

²¹ *Ex parte Jackson*, 96 U. S. 733, 24 L. ed. 877; *Commerford v. Thompson*, 2 Flipp. 616, 1 Fed. 421.

²² *State v. Davis*, 108 Mo. 666, 32 Am. St. Rep. 640, 18 S. W. 894.

ARTICLE V.

RIGHTS OF PARTIES ACCUSED OF CRIME—RIGHTS AS TO PROPERTY.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

Scope of the Amendment.

The prohibitions contained in this amendment are exclusively restrictions upon the federal government, and designed to prevent interference with the rights of the states and their citizens;¹ but it is a restraint on the legislative, as well as on the

¹ *Barron v. Mayor of Baltimore*, 7 Pet. 247, 8 L. ed. 672; *Den v. Hoboken Land Co.*, 18 How. 276, 15 L. ed. 372; *Twitchell v. Commonwealth*, 7 Wall. 325, 19 L. ed. 223; *Fox v. Ohio*, 5 How. 410, 12 L. ed. 213; *Withers v. Buckley*, 20 How. 84, 15 L. ed. 816; *Davidson v. New Orleans*, 96 U. S. 101, 24 L. ed. 616; *In re Sawyer*, 124 U. S. 219, 8 S. Ct. 482, 31 L. ed. 402; *Thorington v. Montgomery*, 147 U. S. 492, 13 S. Ct. 394, 37 L. ed. 252; *Hallinger v. Davis*, 146 U. S. 319, 13 S. Ct. 105, 36 L. ed. 986; *Clark v. Dick*, 1 Dill. 8, Fed. Cas. No. 2818; *Bonaparte v. Camden etc. R. R. Co.*, Baldw. 205, Fed. Cas. No. 1617; *King v. Wilson*, 1 Dil. 558, Fed. Cas. No. 7810; *United States v. Barnhart*, 10 Saw. 497, 22 Fed. 490; *State v. Bradley*, 26 Fed. 290; *Smith v.*

executive and judicial, departments of the federal government.² Corporations are "persons" within the meaning of this article.³

This amendment creates no new rights, but is merely declarative of great fundamental principles.⁴ Both the Fourth and the Fifth Amendments relate to the personal security of the citizen; they nearly run into, and mutually throw light on each other.⁵

Indictment.

The words "infamous crime" are descriptive of an offense that subjects the person to infamous punishment, or prevents his being a witness;⁶ but in order to constitute an offense an infamous crime, it must have been made such by Congress or have been declared to be a felony by act of Congress.⁷ The test of such a crime is whether the statute authorizes infamous punishment.⁸ If the penalty prescribed is imprisonment in a peni-

Bivens, 56 Fed. 355; *Williams v. Hert*, 110 Fed. 166; *Noles v. State*, 24 Ala. 691; *Fife v. State*, 31 Ark. 458, 25 Am. Rep. 558; *Cairo etc. R. R. Co. v. Turner*, 31 Ark. 499, 25 Am. Rep. 567; *Colt v. Eves*, 12 Conn. 252; *Lake Erie R. R. Co. v. Heath*, 9 Ind. 559; *State v. Boswell*, 104 Ind. 542, 4 N. E. 676; *Hollister v. Union Co.*, 9 Conn. 436, 25 Am. Dec. 36; *State v. Barnett*, 3 Kan. 253, 87 Am. Dec. 472; *Martin v. Dix*, 52 Miss. 58, 24 Am. Rep. 663; *Bohanan v. State*, 18 Neb. 77, 53 Am. Rep. 806, 24 N. W. 399; *Eldridge v. Linghamton*, 120 N. Y. 313, 24 N. E. 463; *Barker v. People*, 3 Cow. 686, 15 Am. Dec. 322; *Prescott v. State*, 19 Ohio St. 184, 2 Am. Rep. 388; *State v. Brown Mfg. Co.*, 18 R. I. 20, 25 Atl. 248, 17 L. R. A. 856; *Lybarger v. State*, 2 Wash. 556, 27 Pac. 450.

² *Den v. Hoboken Land Co.*, 18 How. 276, 15 L. ed. 372.

³ *Covington etc. Co. v. Sandford*, 164 U. S. 592, 17 S. Ct. 198, 41 L. ed. 560; *Railroad Tax Cases*, 18 Fed. 385; *San Mateo v. Southern Pacific R. R. Co.*, 8 Saw. 238, 13 Fed. 722.

⁴ *Young v. McKenzie*, 3 Ga. 31; *Campbell v. State*, 11 Ga. 353.

⁵ *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524, 29 L. ed. 746.

⁶ *United States v. Sheppard*, 1 Abb. U. S. 431, Fed. Cas. No. 16,273; *United States v. Block*, 4 Saw. 211, Fed. Cas. No. 14,609; *United States v. Maxwell*, 3 Dill. 275, Fed. Cas. No. 15,750; *United States v. Waller*, 1 Saw. 701, Fed. Cas. No. 16,634.

⁷ *United States v. Wynn*, 3 McCrary, 266, 9 Fed. 886.

⁸ *Ex parte Wilson*, 114 U. S. 425, 5 S. Ct. 935, 29 L. ed. 89; *United States v. Petit*, 114 U. S. 430, 5 S. Ct. 1190, 29 L. ed. 93; *Wong Wing v. United States*, 163 U. S. 234, 16 S. Ct. 979, 41 L. ed. 140.

tentiary for not less than one year, the crime is infamous, whether the penalty carries with it hard labor or not.⁹ If the imprisonment prescribed is "for a period longer than one year," presentment or indictment by a grand jury is indispensable.¹⁰

The prohibition of the amendment is jurisdictional, and a federal court cannot try a prisoner without presentment or indictment in the cases contemplated.¹¹ The punishment imposed in a given case is of no moment in determining the nature of the crime; if the penalty prescribed by the statute is such as to make the crime infamous, this prohibition applies.¹² Misdemeanors cannot be brought within the term "infamous,"¹³ and as respecting crimes not capital or otherwise infamous, there is no restriction as to the mode of procedure.¹⁴ Such as are not infamous may be prosecuted by information,¹⁵ but the mere denomination of a crime as a misdemeanor does not make it such within this article; the penalty must determine its nature.¹⁶ A person sentenced to imprisonment for an infamous crime is entitled to be discharged on habeas corpus.¹⁷ The following are examples of crimes declared by the courts to be infamous: counterfeiting;¹⁸ fraudulent altering of poll-books;¹⁹

⁹ *Mackin v. United States*, 117 U. S. 354, 6 S. Ct. 778, 29 L. ed. 909; *United States v. De Walt*, 128 U. S. 393, 9 S. Ct. 111, 32 L. ed. 485; *In re Claasen*, 140 U. S. 204, 11 S. Ct. 737, 35 L. ed. 409.

¹⁰ *Parkinson v. United States*, 121 U. S. 282, 7 S. Ct. 896, 30 L. ed. 959; *Ex parte McClusky*, 40 Fed. 74; *United States v. Cadwallader*, 59 Fed. 679; *Stokes v. United States*, 60 Fed. 598.

¹¹ *Ex parte Bain*, 121 U. S. 6-12, 7 S. Ct. 787, 30 L. ed. 849; *Ex parte McClusky*, 40 Fed. 74.

¹² *In re Claasen*, 140 U. S. 204, 11 S. Ct. 737, 35 L. ed. 409.

¹³ *United States v. Ebert*, Fed. Cas. No. 15,019.

¹⁴ *United States v. Maxwell*, 3 Dill. 275, Fed. Cas. No. 15,750.

¹⁵ *Ex parte Wilson*, 114 U. S. 421, 5 S. Ct. 935, 29 L. ed. 89; *United States v. Burgess*, 3 McCrary, 278, 9 Fed. 896; *United States v. Wynn*, 3 McCrary, 266, 9 Fed. 886; *United States v. Field*, 16 Fed. 778.

¹⁶ *United States v. Cadwallader*, 59 Fed. 679.

¹⁷ *Ex parte Wilson*, 114 U. S. 421, 5 S. Ct. 935, 29 L. ed. 89.

¹⁸ *United States v. Petit*, 114 U. S. 430, 5 S. Ct. 1190, 29 L. ed. 93.

¹⁹ *Mackin v. United States*, 117 U. S. 350, 6 S. Ct. 778, 29 L. ed. 909.

falsification of reports by national bank cashier;²⁰ embezzlement by national bank president;²¹ fraudulent voting;²² intimidating voters;²³ adultery;²⁴ grand larceny.²⁵

An indictment must be found by a grand jury; an information may be preferred by an officer of the court.²⁶ A grand jury is a body of men varying in number from twelve to twenty-three, who, in secret, hear the evidence offered by the government only, and find or ignore bills of indictment.²⁷ A deficiency in the statutory number of grand jurors will not vitiate the entire proceedings, where more than enough to indict were present and acted, and where objection was not made before sentence.²⁸ The indorsement of an indictment is no part of the charge against the defendant, and the fact that it was not signed or indorsed by the foreman of the grand jury is not necessarily fatal,²⁹ and where an indictment has been found and indorsed as a true bill by the foreman of the grand jury, the failure of the district attorney to sign it does not go to the jurisdiction.³⁰

The indictment here referred to is the indictment as it is presented by the grand jury; any change made on the motion of the court or by the request of the district attorney renders it valueless for the purpose of a prosecution.³¹ A proceeding to disbar an attorney is a quasi civil proceeding; although it

²⁰ *Ex parte Bain*, 121 U. S. 13, 7 S. Ct. 787, 30 L. ed. 849.

²¹ *United States v. De Walt*, 128 U. S. 393, 9 S. Ct. 111, 32 L. ed. 485.

²² *Parkinson v. United States*, 121 U. S. 282, 7 S. Ct. 896, 30 L. ed. 959.

²³ *United States v. Smith*, 40 Fed. 757.

²⁴ *United States v. Sutton*, 47 Fed. 130.

²⁵ *State v. Clark*, 60 Kan. 455, 56 Pac. 769.

²⁶ *Clepper v. State*, 4 Tex. 244.

²⁷ *Commonwealth v. Wood*, 2 Cush. 149; *People v. King*, 2 Caines Rep. 98.

²⁸ *In re Wilson*, 140 U. S. 582, 11 S. Ct. 870, 35 L. ed. 513.

²⁹ *Frisbie v. United States*, 157 U. S. 164, 15 S. Ct. 586, 39 L. ed. 657.

³⁰ *In re Lane*, 135 U. S. 449, 10 S. Ct. 760, 34 L. ed. 219.

³¹ *Ex parte Bain*, 121 U. S. 11-13, 7 S. Ct. 781, 30 L. ed. 849.

may be based upon a criminal charge, and indictment is unnecessary.³²

This article retains its force in time of war as well as peace,^{32a} and it cannot be avoided in time of war on the plea of public danger.³³ Cases arising in the land and naval forces are excepted from presentment and indictment and the right of trial by jury,³⁴ but "when in actual service in time of war or public danger" refers to the militia and the land and naval forces,³⁵ and a military commission for the trial of persons not in the military or naval service is unconstitutional.³⁶ An offense committed by a person while actually in the naval service is a "case arising in the naval forces."³⁷ So a paymaster's clerk on duty in the navy is a person "in the naval forces."³⁸

The power to punish military and naval officers is distinct from the power to define judicial powers,³⁹ and the power of Congress to provide for the government of the land and naval forces is not limited or affected by this article.⁴⁰ A court-martial is a lawful tribunal under the constitution;⁴¹ but if such a court should act beyond its jurisdiction or inflict a punishment forbidden by law, its action could be inquired into by the civil courts and redress given.⁴²

By the mere act of acceptance of a cession of territory by Congress the inhabitants of such territory do not acquire the

³² *Ex parte Wall*, 107 U. S. 265, 2 S. Ct. 569, 27 L. ed. 552.

^{32a} *In re Kemp*, 16 Wis. 359.

³³ *Ex parte Milligan*, 4 Wall. 123, 18 L. ed. 281.

³⁴ *Ex parte Milligan*, 4 Wall. 123, 18 L. ed. 281; *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

³⁵ *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

³⁶ *Milligan v. Hovey*, 3 Biss. 13, Fed. Cas. No. 9605; *In re Bogart*, 2 Saw. 402, Fed. Cas. No. 1596; *Ex parte Field*, 5 Blatchf. 79, Fed. Cas. No. 4761.

³⁷ *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

³⁸ *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

³⁹ *Dynes v. Hoover*, 20 How. 78, 15 L. ed. 838; *In re Bogart*, 2 Saw. 401, Fed. Cas. No. 1596.

⁴⁰ *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

⁴¹ *In re Bogart*, 2 Saw. 406, Fed. Cas. No. 1596.

⁴² *Dynes v. Hoover*, 20 How. 82, 15 L. ed. 838.

right to presentment by a grand jury in the cases here contemplated.⁴³

Former Jeopardy.

Jeopardy is the peril in which a defendant is put when he is regularly charged with crime before a tribunal properly organized and competent to try him;⁴⁴ the situation of a prisoner when a trial jury has been impaneled and sworn to try the case upon a valid indictment or information and such jury has been charged with his deliverance.⁴⁵ A criminal proceeding cannot be said to be instituted when a bill of indictment is submitted to a grand jury by the prosecuting attorney; a formal charge openly made against the accused, either by indictment presented, information filed in court, or by complaint before a magistrate, is necessary.⁴⁶ From this it appears that the court before whom the accused was tried must have had jurisdiction,⁴⁷ and that the indictment or information charging the offense must not have been so invalid that a judgment based upon it would be annulled on appeal.⁴⁸ The supreme court has declared, however, that a general verdict of acquittal upon an issue of not guilty to an indictment not objected to before verdict as being insufficient, is a bar to a second indictment for the same offense, even though the first indictment be so defective that it would be set aside on writ of error.⁴⁹ But, on the other hand, a defendant who procures a judgment to be set aside may be tried anew on the same or another indictment for the same offense.⁵⁰

⁴³ *Territory of Hawaii v. Mankichi*, 190 U. S. 197, 23 S. Ct. 787, 47 L. ed. 1016.

⁴⁴ *Commonwealth v. Fitzpatrick*, 121 Pa. St. 109, 6 Am. St. Rep. 757, 15 Atl. 466, 1 L. R. A. 451.

⁴⁵ *McDonald v. State*, 79 Wis. 651, 24 Am. St. Rep. 740, 50 N. W. 185.

⁴⁶ *Post v. United States*, 161 U. S. 587, 16 S. Ct. 611, 40 L. ed. 816.

⁴⁷ *Thompson v. Smith*, 79 Me. 162, 8 Atl. 688.

⁴⁸ *Weston v. State*, 63 Ala. 155; *Kendall v. State*, 65 Ala. 492; *State v. Heath*, 8 Mo. App. 102.

⁴⁹ *United States v. Ball*, 163 U. S. 669, 16 S. Ct. 1192, 42 L. ed. 800.

⁵⁰ *United States v. Ball*, 163 U. S. 669, 16 S. Ct. 1192, 42 L. ed.

A prisoner is not put in jeopardy until a jury of twelve men is selected and sworn,⁵¹ and for the purposes of this amendment he is not relieved from his first jeopardy so as to preclude a second until the verdict of the jury is rendered for or against him.⁵² So twice in jeopardy has no reference to mistrials.⁵³ Nor does the prohibition apply where a jury has been discharged from necessity, or the ends of justice would be defeated;⁵⁴ as where one of the jurors becomes insane,⁵⁵ or is attacked with a sudden illness;⁵⁶ or if a juror is so biased that he is unfit to sit on the case;⁵⁷ or where the jury cannot agree;⁵⁸ or where the jury has failed to agree on the last day of the term.⁵⁹ So also where the jury was discharged on ac-

300; *United States v. Townmaker*, Hemp. 299, Fed. Cas. No. 16,533a; *State v. Bates*, 22 Utah, 65, 83 Am. St. Rep. 768, 61 Pac. 905; *State v. Ward*, 48 Ark. 36, 3 Am. St. Rep. 213, 2 S. W. 191; *Commonwealth v. Arnold*, 83 Ky. 1, 4 Am. St. Rep. 114.

⁵¹ *People v. Barker*, 60 Mich. 277, 1 Am. St. Rep. 501, 27 N. W. 539.

⁵² *United States v. Perez*, 9 Wheat. 579, 6 L. ed. 165; *United States v. Haskell*, 4 Wash. C. C. 402, Fed. Cas. No. 15,321; *People v. Goodwin*, 18 Johns. 187, 9 Am. Dec. 203; *Hoffman v. State*, 20 Md. 425; *State v. Moor*, Walk. 134, 12 Am. Dec. 541; *Commonwealth v. Merrill*, Thach. C. C. 1; *Commonwealth v. Fitzpatrick*, 121 Pa. St. 109, 6 Am. St. Rep. 757, 15 Atl. 466, 1 L. R. A. 451.

⁵³ *United States v. Haskell*, 4 Wash. C. C. 410, Fed. Cas. No. 15,321.

⁵⁴ *United States v. Perez*, 9 Wheat. 579, 6 L. ed. 165; *Thompson v. United States*, 155 U. S. 274, 15 S. Ct. 73, 39 L. ed. 146; *United States v. Gilbert*, 2 Sum. 19, Fed. Cas. No. 15,204; *Commonwealth v. Cook*, 6 Serg. & R. 577, 19 Am. Dec. 465; *United States v. Wilson*, Baldw. 95, Fed. Cas. No. 16,730; *United States v. Keen*, 1 McLean, 434, Fed. Cas. No. 15,510.

⁵⁵ *United States v. Haskell*, 4 Wash. C. C. 402, Fed. Cas. No. 15,321.

⁵⁶ *Commonwealth v. Merrill*, Thach. C. C. 1.

⁵⁷ *Simmons v. United States*, 142 U. S. 155, 12 S. Ct. 171, 35 L. ed. 968; *United States v. Morris*, 1 Curt. 23, Fed. Cas. No. 15,815.

⁵⁸ *United States v. Perez*, 9 Wheat. 580, 6 L. ed. 165; *Thompson v. United States*, 155 U. S. 274, 15 S. Ct. 73, 39 L. ed. 146; *Dreyer v. Illinois*, 187 U. S. 71, 23 S. Ct. 78, 47 L. ed. 79; *People v. Goodwin*, 18 Johns. 187, 9 Am. Dec. 203.

⁵⁹ *State v. Moor*, Walk. 134, 12 Am. Dec. 541.

count of the absence of witnesses, a subsequent trial is not thereby prevented.⁶⁰

Where a jury has been impaneled and sworn by inadvertence before the argument, the proceeding may be disregarded and a jury impaneled in the regular order.⁶¹

The court may, in its discretion, discharge the jury in a capital case as well as in a case of misdemeanor,⁶² and a defendant cannot base a plea of former jeopardy on the ground that the court, of its own motion, discharged the jury, upon its failure to agree, without the defendant's consent;⁶³ but a defendant cannot be deprived of his right to the plea by the unnecessary discharge of the jury without his consent.⁶⁴

A verdict of acquittal, although not followed by any judgment, is a bar to a subsequent prosecution for the same offense,⁶⁵ and when a verdict of guilty is rendered, jeopardy attaches although judgment is arrested for want of arraignment and plea.⁶⁶ So if the prosecuting attorney enters a nolle prosequi after the jury has been impaneled and sworn, the accused has been placed in jeopardy,⁶⁷ if the court had jurisdiction.⁶⁸ Resentencing a prisoner upon the same verdict is not putting him twice in jeopardy for the same offense.^{68a}

Where either a fine or imprisonment may be imposed, the court cannot, after payment of the fine, render a new judg-

⁶⁰ *Hoffman v. State*, 20 Md. 425. And see *United States v. Watson*, 3 Ben. 1, Fed. Cas. No. 16,651.

⁶¹ *United States v. Riley*, 5 Blatchf. 204, Fed. Cas. No. 16,164.

⁶² *United States v. Haskell*, 4 Wash. C. C. 402, Fed. Cas. No. 15,321.

⁶³ *Logan v. United States*, 144 U. S. 297, 12 S. Ct. 617, 36 L. ed. 429.

⁶⁴ *Ex parte Glenn*, 111 Fed. 257; *State v. Ward*, 48 Ark. 36, 3 Am. St. Rep. 213, 2 S. W. 191.

⁶⁵ *United States v. Ball*, 163 U. S. 671, 16 S. Ct. 1192, 42 L. ed. 300.

⁶⁶ *State v. Parish*, 43 Wis. 395. And see *State v. Norvell*, 2 Yerg. 24, 24 Am. Dec. 458.

⁶⁷ *United States v. Shoemaker*, 2 McLean, 114, Fed. Cas. No. 16,279.

⁶⁸ *Thompson v. State*, 6 Neb. 107; *Commonwealth v. Peters*, 53 Mass. 387; *State v. Odell*, 4 Blackf. 156.

^{68a} *McDonald v. State*, 79 Wis. 651, 24 Am. St. Rep. 740, 50 N. W. 185.

ment of imprisonment.⁶⁹ Where, however, a penalty of fine and imprisonment is provided for an offense, the recovery of the fine in a civil action and the punishment by imprisonment in a criminal action do not put the accused twice in jeopardy.⁷⁰

The phrase "life and limb," as here used, would, if strictly construed, confine the cases wherein the plea of jeopardy could be raised to a very narrow compass; but the courts have construed it liberally, and have held it to embrace all cases wherein a second prosecution is attempted for the same offense, whether felony or misdemeanor.⁷¹ In order that the plea may be effective, however, the prosecution must be for the "same offense."⁷²

The usual test of the identity of the offenses may be thus expressed: "Unless the first indictment were such as the prisoner might have been convicted upon by proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second."⁷³ Where a person is convicted

⁶⁹ *Ex parte Lange*, 18 Wall. 170, 21 L. ed. 872. But see *Brown v. Swineford*, 44 Wis. 282, 28 Am. Rep. 582.

⁷⁰ *In re Leszynsky*, 16 Blatchf. 9, Fed. Cas. No. 8279.

⁷¹ *Ex parte Lange*, 18 Wall. 163, 21 L. ed. 872; *Berkowitz v. United States*, 93 Fed. 452; *Williams v. Commonwealth*, 78 Ky. 93; *State v. Cheevers*, 7 La. Ann. 40; *Commonwealth v. Boby*, 12 Pick. 496; *State v. Behimer*, 20 Ohio St. 572; *Jones v. Commonwealth*, 20 Gratt. 848. See, also, *People v. Miner*, 144 Ill. 308, 33 N. E. 40, 19 L. R. A. 342.

⁷² *Ex parte Lange*, 18 Wall. 168, 21 L. ed. 872; *Fox v. Ohio*, 5 How. 439, 12 L. ed. 213; *In re Snow*, 120 U. S. 286, 7 S. Ct. 556, 30 L. ed. 658; *Cross v. North Carolina*, 132 U. S. 138, 10 S. Ct. 47, 33 L. ed. 287.

⁷³ *Berkowitz v. United States*, 93 Fed. 452; *United States v. Flecke*, 2 Ben. 456, Fed. Cas. No. 15,120; *Dominick v. State*, 40 Ala. 680, 91 Am. Dec. 496; *Hall v. State*, 134 Ala. 90, 32 South. 750; *People v. Defoor*, 100 Cal. 150, 34 Pac. 642; *Guenther v. People*, 22 Colo. 121, 43 Pac. 999; *Durham v. People*, 4 Scam. 172, 39 Am. Dec. 407; *Campbell v. People*, 109 Ill. 565, 50 Am. Rep. 621; *State v. Rosenbaum*, 23 Ind. App. 236, 77 Am. St. Rep. 432, 55 N. E. 110; *State v. Ingalls*, 98 Iowa, 728, 68 N. W. 445; *Commonwealth v. Vaughn*, 101 Ky. 603, 42 S. W. 117, 45 L. R. A. 858; *State v. Littlefield*, 70 Me. 452, 35 Am. Rep. 335; *State v. Williams*, 152 Mo. 115, 75 Am. St. Rep. 441, 53 S. W. 424; *People v. McGowan*, 17 Wend. 386; *State v. Nash*, 86 N. C. 650, 41 Am. Rep. 472; *Hilands v. Commonwealth*, 114 Pa. St. 372, 6 Atl. 267; *Williams v. State*, 13 Tex. App. 285, 46 Am. Rep. 237.

of a crime which has several incidents included in it, a second trial for one of those incidents is putting him twice in jeopardy.⁷⁴ In order that acquittal may be a bar to a subsequent indictment for a lesser crime, it is essential that conviction of the lesser crime might have been had under the indictment for the greater;⁷⁵ for where a conviction for a less crime cannot be had under an indictment for a greater which includes it, while acquittal would not be a bar, a conviction of the greater would involve the lesser and be a bar.⁷⁶ And this is true where the greater offense is a felony and the lesser a misdemeanor. When, therefore, on a prosecution for a felony there may be a conviction for an ingredient misdemeanor, there cannot be any subsequent prosecution for the misdemeanor.⁷⁷

It does not follow from this that a prosecution, to be a bar to a later prosecution, must be for an offense of a higher degree necessarily including the offense for which the accused is indicted; a prosecution for a lesser offense necessarily included in a greater is a bar whenever the defendant could be convicted of the lesser on an indictment for the greater.⁷⁸ It has been held

⁷⁴ *Hans Neilsen*, Petitioner, 131 U. S. 188, 9 S. Ct. 672, 33 L. ed. 118; *People v. Defoor*, 100 Cal. 157, 34 Pac. 644; *Carter v. McClaughry*, 183 U. S. 365, 22 S. Ct. 181, 46 L. ed. 236.

⁷⁵ *Hans Neilsen*, Petitioner, 131 U. S. 190, 9 S. Ct. 672, 33 L. ed. 118; *United States v. Wilson*, 7 Pet. 150, 8 L. ed. 640; *People v. McDaniels*, 137 Cal. 192, 92 Am. St. Rep. 81, 69 Pac. 1006, 59 L. R. A. 578; *Jones v. State*, 66 Miss. 380, 14 Am. St. Rep. 570, 6 South. 231; *Dinkey v. Commonwealth*, 17 Pa. St. 126, 55 Am. Dec. 542.

⁷⁶ *Hans Neilsen*, Petitioner, 131 U. S. 190, 9 S. Ct. 672, 33 L. ed. 118.

⁷⁷ *Henry v. State*, 33 Ala. 389; *Moore v. State*, 71 Ala. 307; *State v. Hall*, 50 Ark. 28, 6 S. W. 20; *People v. McDaniels*, 137 Cal. 192, 92 Am. St. Rep. 81, 69 Pac. 1006, 59 L. R. A. 578; *Franklin v. State*, 85 Ga. 570; *State v. Smith*, 43 Vt. 324.

⁷⁸ *Storrs v. State*, 129 Ala. 101, 29 South. 778; *State v. Blevins*, 134 Ala. 213, 32 South. 637; *State v. Smith*, 53 Ark. 24, 13 S. W. 391; *People v. Ny Sam Chung*, 94 Cal. 304, 28 Am. St. Rep. 129, 29 Pac. 642; *People v. McDaniels*, 137 Cal. 192, 92 Am. St. Rep. 81, 69 Pac. 1006, 59 L. R. A. 578; *Whilden v. State*, 25 Ga. 396, 71 Am. Dec. 181; *Bell v. State*, 103 Ga. 397, 68 Am. St. Rep. 102, 30 S. E. 294; *State v. Gleason*, 56 Iowa, 203, 9 N. W. 126; *State v. Wills*, 26 Minn. 381, 4 N. W. 615; *State v. Hatcher*, 136 Mo. 641, 38 S. W. 719; *Commonwealth v. Amer*, 149 Pa. St. 35, 24 Atl. 83; *Herera v. State*,

that this rule would apply even if the court trying the lesser charge had no jurisdiction over the greater.⁷⁹

One offense cannot be split up into several so that a prosecution as to one part will not bar a prosecution as to another; e. g., where several articles are taken at one time and place by the same act of theft.⁸⁰ Where there are several takings, however, this rule has no application.⁸¹ On the same principle, it has been held that where a person is charged under separate indictments for robbing several individual passengers on the same stage at the same time, acquittal or conviction under one indictment is no bar to prosecution under the others.⁸² Where several persons are injured or killed in the same affray or about the same point of time, the assaults or homicides are generally declared to be distinct offenses.⁸³ The acquittal of a defendant on the issue of insanity on a trial for murder does not render the plea of former jeopardy available in a later prosecution for another murder committed on the same day.⁸⁴

35 Tex. Cr. 607, 34 S. W. 943; *People v. Arnold*, 46 Mich. 268, 9 N. W. 406.

⁷⁹ *People v. McDaniels*, 137 Cal. 192, 92 Am. St. Rep. 81, 69 Pac. 1006, 59 L. R. A. 578; *Commonwealth v. Bosworth*, 113 Mass. 200, 18 Am. Rep. 467.

⁸⁰ *United States v. John*, 4 Cr. C. C. 336, Fed. Cas. No. 15,479; *United States v. Lee*, 4 Cr. C. C. 446, Fed. Cas. No. 446; *State v. Elder*, 65 Ind. 282, 32 Am. Rep. 69; *State v. Egglest*, 41 Iowa, 574, 21 Am. Rep. 612; *Fisher v. Commonwealth*, 1 Bush (Ky.), 211, 89 Am. Dec. 620; *State v. Emery*, 68 Vt. 109, 54 Am. St. Rep. 878, 34 Atl. 432.

⁸¹ *State v. English*, 14 Mont. 399, 36 Pac. 815; *Willis v. State*, 24 Tex. App. 586, 6 S. W. 857; *Phillips v. State*, 85 Tenn. 551, 3 S. W. 434.

⁸² *In re Allison*, 13 Colo. 525, 16 Am. St. Rep. 224, 22 Pac. 820, 10 L. R. A. 790.

⁸³ *Crocker v. State*, 47 Ga. 568; *Greenwood v. State*, 64 Ind. 250; *Baker v. Commonwealth*, 20 Ky. Law Rep. 879, 47 S. W. 864; *People v. Ochotski*, 115 Mich. 601, 73 N. W. 889; *Jones v. State*, 66 Miss. 380, 14 Am. St. Rep. 570, 6 South. 231; *State v. Evans*, 33 W. Va. 417, 10 S. E. 792.

⁸⁴ *Hotema v. United States*, 186 U. S. 413, 22 S. Ct. 895, 46 L. ed. 1225.

The possession of several forged instruments at the same time constitutes one offense, which cannot be split up into as many offenses as there are instruments.⁸⁵ And the counterfeiting of notes at different times, although from the same plate, constitutes distinct offenses.⁸⁶

The conviction of an offense as a principal is not a bar to a prosecution for a conspiracy to commit the same offense.⁸⁷

A plea that the same bank bill which the defendant is charged with passing was given in evidence under a former indictment of the same character, when the defendant was acquitted does not show identity of offenses.⁸⁸

Where the same act constitutes an offense against two jurisdictions, it is settled that it may be punished by either or both without violating this amendment.⁸⁹

A statute providing for a heavier sentence in case of a prior conviction does not place the accused twice in jeopardy.⁹⁰

The provision is intended to shield the prisoner from a second trial except at his election and request, which is manifested by his application for a new trial,⁹¹ but a convicted person can-

⁸⁵ *United States v. Miner*, 11 Blatchf. 511; *State v. Benham*, 7 Conn. 414.

⁸⁶ *Bliss v. United States*, 105 Fed. 508.

⁸⁷ *Whitford v. State*, 24 Tex. App. 489, 5 Am. St. Rep. 896, 6 S. W. 537; *Davis v. People*, 22 Colo. 1, 43 Pac. 122. But see *Reynolds v. People*, 83 Ill. 479, 25 Am. Rep. 410.

⁸⁸ *United States v. Randenbush*, 8 Pet. 289, 8 L. ed. 948.

⁸⁹ *United States v. Hood*, 2 Cr. C. C. 133, Fed. Cas. No. 15,385; *United States v. Wells*, 2 Cr. C. C. 45, Fed. Cas. No. 16,662; *Englehart v. State*, 88 Ala. 100, 7 South. 154; *Van Buren v. Wells*, 53 Ark. 368, 22 Am. St. Rep. 214, 14 S. W. 38; *Hunt v. Jacksonville*, 38 Fla. 504, 43 Am. St. Rep. 214, 16 South. 398; *McRae v. Mayor*, 59 Ga. 168, 27 Am. Rep. 390; *Kemper v. Commonwealth*, 85 Ky. 219, 7 Am. St. Rep. 593, 3 S. W. 159; *State v. Reid*, 115 N. C. 741, 20 S. E. 468; *Anderson v. O'Donnell*, 29 S. C. 355, 13 Am. St. Rep. 728, 7 S. E. 523, 1 L. R. A. 632. And see *Crossley v. California*, 168 U. S. 641, 18 S. Ct. 242, 42 L. ed. 610.

⁹⁰ *McDonald v. Massachusetts*, 180 U. S. 313, 21 S. Ct. 389, 45 L. ed. 542, affirming 173 Mass. 322, 73 Am. St. Rep. 293, 53 N. E. 874; *People v. Stanley*, 47 Cal. 113, 17 Am. Rep. 401; *State v. Moore*, 121 Mo. 514, 42 Am. St. Rep. 542, 26 S. W. 345.

⁹¹ *United States v. Shoemaker*, 2 McLean, 114, Fed. Cas. No. 16,279.

not, by his own act, avoid the jeopardy in which he stands, and then assert it as a bar to subsequent jeopardy.⁹² The protection afforded by this amendment may be waived by the accused.⁹³

Privilege of Witness.

The object of this part of the Fifth Amendment is to insure a witness, in any investigation in the federal courts, against being compelled to give testimony which might tend to incriminate him.⁹⁴ It applies, however, only to criminal cases,⁹⁵ and the term "criminal case" means a prosecution for a criminal offense against the party who is a witness.⁹⁶ The provision must have a broad construction in favor of the right it is intended to secure.⁹⁷ Forcing a person to be a witness against himself is contrary to the principles of a republican government.⁹⁸ In England "*nemo tenetur seipsum accusare*" is a mere rule of evidence, while in the United States it is a constitutional right,⁹⁹ based upon the ancient principle that a witness cannot be compelled to give testimony tending to criminate or subject him to fines, penalties or forfeitures.¹⁰⁰

While the term "criminal case" contemplates a case involving punishment for crime in an ordinary criminal proceeding,¹⁰¹

⁹² *Murphy v. Massachusetts*, 177 U. S. 156, 20 S. Ct. 639, 44 L. ed. 711.

⁹³ *Veatch v. State*, 60 Ind. 291.

⁹⁴ *Counselman v. Hitchcock*, 142 U. S. 562, 12 S. Ct. 195, 35 L. ed. 1110.

⁹⁵ *Ex parte Meador*, 1 Abb. U. S. 317, Fed. Cas. No. 9275; *Ex parte Strouse*, 1 Saw. 605, Fed. Cas. No. 13,548; *In re Phillips*, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097.

⁹⁶ *Counselman v. Hitchcock*, 142 U. S. 562, 12 S. Ct. 195, 35 L. ed. 1110.

⁹⁷ *Counselman v. Hitchcock*, 142 U. S. 562, 12 S. Ct. 195, 35 L. ed. 1110; *Ex parte Senior*, 37 Fla. 17, 19 South. 654, 32 L. R. A. 133.

⁹⁸ *Wyneham v. People*, 13 N. Y. 392.

⁹⁹ *Brown v. Walker*, 161 U. S. 596, 16 S. Ct. 644, 40 L. ed. 819.

¹⁰⁰ *Counselman v. Hitchcock*, 142 U. S. 563, 12 S. Ct. 995, 35 L. ed. 1110.

¹⁰¹ *United States v. Parker*, 21 Int. Rev. Rec. 251, Fed. Cas. No. 15,993.

or a prosecution against a public officer on a charge of misconduct,¹⁰² yet under the broad construction necessary a civil suit to recover a penalty for violating a law is criminal in its nature and the defendant cannot be compelled to testify;¹⁰³ and the rule has been extended to an examination in bankruptcy.¹⁰⁴ The privilege is not confined to the actual proceeding against a person in court, but extends to proceedings before a grand jury.¹⁰⁵ The seizure or compulsory production of a person's private papers to be used in a suit for a forfeiture for a violation of law is equivalent to compelling him to be a witness against himself.¹⁰⁶

The provision was not, however, intended to shield a witness from infamy or disgrace resulting from incriminating testimony, but only from actual prosecution and punishment.¹⁰⁷ So if prosecution for the crime is barred, a witness may not refuse to testify.¹⁰⁸

The privilege does not obtain where the statute under which a proceeding is had secures the constitutional right by providing that no testimony given by a witness shall be offered in evidence against him in any criminal proceeding,¹⁰⁹ and that he shall be exempt from prosecution for any offense disclosed by his testimony.¹¹⁰

¹⁰² *United States v. Collins*, 1 Woods, 499, Fed. Cas. No. 14,837.

¹⁰³ *Lees v. United States*, 150 U. S. 480, 14 S. Ct. 163, 37 L. ed. 1150.

¹⁰⁴ *In re Rosser*, 96 Fed. 308.

¹⁰⁵ *Counselman v. Hitchcock*, 142 U. S. 562, 12 S. Ct. 995, 35 L. ed. 1110; *United States v. Edgerton*, 80 Fed. 376; *Ex parte Clarke*, 103 Cal. 354, 37 Pac. 231; *Ex parte Wilson*, 39 Tex. Cr. 638, 47 S. W. 1000.

¹⁰⁶ *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524, 29 L. ed. 741; *McKnight v. United States*, 115 Fed. 972.

¹⁰⁷ *Brown v. Walker*, 161 U. S. 598, 16 S. Ct. 644, 40 L. ed. 819, affirming 70 Fed. 46.

¹⁰⁸ *Brown v. Walker*, 161 U. S. 598, 16 S. Ct. 644, 40 L. ed. 819. And see *Robertson v. Baldwin*, 165 U. S. 282, 17 S. Ct. 329, 41 L. ed. 715.

¹⁰⁹ *Mackel v. Rochester*, 102 Fed. 314.

¹¹⁰ *In re Walsh*, 104 Fed. 519; *Foot v. Buchanan*, 113 Fed. 156.

A witness may waive the right to refuse to testify on the ground that his testimony would tend to incriminate him;¹¹¹ but the waiver must be voluntary and with a knowledge of his rights.¹¹² When a defendant in a criminal trial offers himself as a witness in his own behalf he is subject to cross-examination.¹¹³ He then loses his character as a defendant and becomes a witness, and may be examined as fully as any other witness.¹¹⁴

A witness cannot avoid answering a question by the mere statement that the answer would tend to incriminate him, without regard to whether the statement is reasonable or not; such question is for the court to determine.¹¹⁵ Unless the court can see that the witness will not be incriminated, the privilege should be recognized and protected;¹¹⁶ but a witness will not be permitted to make fraudulent use of his privilege, and when the court can discover no reason why the answer would be incriminating, it should deny the privilege or make further investigation.¹¹⁷ An action to enforce a forfeiture of imports for nonpayment of duty is not a criminal prosecution.¹¹⁸

Due Process of Law.*

The Fifth Amendment applies the constitutional provision for due process of law to the national government alone.¹¹⁹ The

¹¹¹ *Brown v. Walker*, 161 U. S. 596, 16 S. Ct. 644, 40 L. ed. 819; *Fries v. Brugler*, 12 N. J. L. 79, 21 Am. Dec. 52.

¹¹² *United States v. Bell*, 81 Fed. 851. But see *United States v. Kimball*, 117 Fed. 156.

¹¹³ *Spies v. Illinois*, 123 U. S. 131, 8 S. Ct. 21, 31 L. ed. 80.

¹¹⁴ *Samuel v. People*, 164 Ill. 379, 45 N. E. 728; *People v. Tice*, 131 N. Y. 651, 30 N. E. 494, 15 L. R. A. 669; *State v. Duncan*, 7 Wash. 336, 38 Am. St. Rep. 888, 35 Pac. 117; *State v. Thomas*, 98 N. C. 599, 2 Am. St. Rep. 351, 4 S. E. 518; *Ex parte Parke*, 37 Tex. Cr. 590, 66 Am. St. Rep. 835, 40 S. W. 300.

¹¹⁵ *Ex parte Irvine*, 74 Fed. 954; *Foot v. Buchanan*, 113 Fed. 156.

¹¹⁶ *Janvrin v. Scammon*, 29 N. H. 280; *Coburn v. Odell*, 30 N. H. 540.

¹¹⁷ *State v. Kent*, 5 N. Dak. 516, 67 N. W. 1052, 35 L. R. A. 518; *People v. Mather*, 4 Wend. 230, 21 Am. Dec. 122.

¹¹⁸ *United States v. Zucker*, 161 U. S. 481, 16 S. Ct. 643, 40 L. ed. 777.

¹¹⁹ *Davidson v. New Orleans*, 96 U. S. 101, 24 L. ed. 616; *In re Sawyer*, 124 U. S. 219, 8 S. Ct. 482, 24 L. ed. 616.

*For prohibition as applied to states, see post, p. 708 et seq.

supreme court has declared that the phrase "due process of law" remains without precise definition; that its meaning should be ascertained by the gradual process of judicial inclusion and exclusion, as cases presented require.¹²⁰ However this may be, the courts, both federal and state, have in many cases endeavored to frame a definition which would cover all cases. It has been said to be the due course of legal proceedings according to rules established for the protection of private rights;¹²¹ such an exertion of the powers of government as the settled maxims of the law permit and sanction;¹²² law in its regular course of administration through courts of justice;¹²³ a timely and regular proceeding to judgment and execution;¹²⁴ notice to a person of proceedings against him, and a right to be heard in his own behalf;¹²⁵ a trial in which the rights of the party shall be decided by a tribunal appointed by law and governed by rules of law previously established.¹²⁶

Some of the courts have found an equivalent of the phrase in the words "law of the land,"¹²⁷ which has been defined to be that law which secures the individual from the arbitrary exercise of

¹²⁰ *Davidson v. New Orleans*, 96 U. S. 104, 24 L. ed. 616.

¹²¹ *Kennard v. Louisiana*, 92 U. S. 481, 23 L. ed. 478; *Scott v. McNeal*, 154 U. S. 46, 14 S. Ct. 1108, 38 L. ed. 896.

¹²² *Bertholf v. O'Rielly*, 74 N. Y. 509, 30 Am. Rep. 323; *In re Ah Fook*, 49 Cal. 402.

¹²³ *Barker v. Kelly*, 11 Minn. 480; *Rowan v. State*, 30 Wis. 129, 11 Am. Rep. 559; *State v. Becht*, 23 Minn. 413; *Brown v. New Jersey*, 175 U. S. 176, 20 S. Ct. 77, 44 L. ed. 119; *Leeper v. Texas*, 139 U. S. 468, 11 S. Ct. 577, 35 L. ed. 225.

¹²⁴ *Dwight v. Williams*, 4 McLean, 586, Fed. Cas. No. 4218.

¹²⁵ *Gilmore v. Sapp*, 100 Ill. 297; *Hovey v. Elliott*, 167 U. S. 417, 17 S. Ct. 841, 42 L. ed. 215.

¹²⁶ *Kilbourn v. Thompson*, 103 U. S. 182, 26 L. ed. 377; *State v. Guilbert*, 56 Ohio St. 575, 60 Am. St. Rep. 756, 47 N. E. 551.

¹²⁷ *Den v. Hoboken Land etc. Co.*, 18 How. 276, 15 L. ed. 372; *Bank of Columbia v. Okely*, 4 Wheat. 244, 4 L. ed. 559; *Ex parte Wall*, 107 U. S. 289, 2 S. Ct. 569, 27 L. ed. 552; *In re Meador*, 1 Abb. U. S. 331, Fed. Cas. No. 9375; *Harding v. People*, 160 Ill. 459, 52 Am. St. Rep. 344, 43 N. E. 624, 32 L. R. A. 445; *James v. Reynolds*, 2 Tex. 251; *State v. Julow*, 129 Mo. 163, 50 Am. St. Rep. 443, 31 S. W. 781, 29 L. R. A. 257.

the powers of government, unrestrained by the established principles of private rights and distributive justice,¹²⁸ or "the general law, a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."¹²⁹ As used in this amendment it refers to the law deriving its authority from legislative powers conferred upon Congress by the constitution, exercised within the limits therein prescribed and interpreted according to principles of common law.¹³⁰

From these definitions it will be seen that the term "due process" generally implies and includes parties, judge, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings;¹³¹ a legal proceeding under the direction of a court;¹³² a tribunal of competent jurisdiction, and a sufficient service on the defendant, or an appearance on his part to render him amenable to that jurisdiction,¹³³ and it would seem that the requirement would be satisfied if a person were afforded an adequate remedy before a court of competent jurisdiction.¹³⁴ But that the phrase means a trial according to some settled course of procedure is not universally true;¹³⁵ nor does it necessarily import a jury trial.¹³⁶

¹²⁸ *Bank of Columbia v. Okely*, 4 Wheat. 244, 4 L. ed. 559.

¹²⁹ *Argument of Webster in Trustees Dartmouth College v. Woodward*, 4 Wheat. 581, 4 L. ed. 629.

¹³⁰ *Hurtado v. California*, 110 U. S. 535, 4 S. Ct. 292, 28 L. ed. 232.

¹³¹ *Den v. Hoboken Land etc. Co.*, 18 How. 280, 15 L. ed. 372; *Huber v. Reilly*, 53 Pa. St. 112; *Rees v. City of Watertown*, 19 Wall. 122, 22 L. ed. 72; *Westervelt v. Gregg*, 12 N. Y. 202, 62 Am. Dec. 160.

¹³² *Newcomb v. Smith*, 1 Chand. 71.

¹³³ *Pennoyer v. Neff*, 95 U. S. 733, 24 L. ed. 565; *Parsons v. Russell*, 11 Mich. 113, 83 Am. Dec. 728.

¹³⁴ *Chicago etc. B. R. Co. v. State*, 47 Neb. 549, 53 Am. St. Rep. 557, 66 N. W. 624, 41 L. R. A. 481; *Rouse v. Donovan*, 104 Mich. 234, 53 Am. St. Rep. 457, 62 N. W. 359, 27 L. R. A. 577.

¹³⁵ *Den v. Hoboken Land etc. Co.*, 18 How. 272, 15 L. ed. 372; *Greene v. Briggs*, 1 Curt. 311, Fed. Cas. No. 5764; *Hope v. Henderson*, 4 Dev. 15, 25 Am. Dec. 677; *Taylor v. Porter*, 4 Hill, 140, 40 Am. Dec. 274; *Van Zandt v. Waddell*, 2 Yerg. 260; *State Bank v. Cooper*, 2 Yerg. 599; *Jones v. Perry*, 10 Yerg. 59, 3 Am. Dec. 430.

¹³⁶ *Ex parte Meador*, 1 Abb. U. S. 317, Fed. Cas. No. 9375; *Montana Co. v. St. Louis Min. etc. Co.*, 152 U. S. 170, 14 S. Ct. 506, 33 L. ed. 398.

The right of appeal and the requirement of a bond on appeal are not essential to the requirement,¹³⁷ nor are rehearings or new trials necessary in order that a person may have due process of law.¹³⁸

The term does not necessarily imply delay,¹³⁹ nor preclude summary proceedings.¹⁴⁰

The term "law of the land" is not to be taken as including everything which may pass under the form of statutory enactment; in order to be "due process" a law must be in accord with the constitution.¹⁴¹

In determining what is due process of law, regard must be had to the substance, not to the form, of the proceeding,¹⁴² and in all cases that kind of procedure is due process which is suitable and proper to the nature of the case, and sanctioned by the established usages and customs of the court.¹⁴³ If, upon examination, an act passed by Congress is shown not to be in conflict with the constitution, regard should be had to the law and usage in England obtaining before the Declaration of Independence to see if it accords with the process prescribed by Congress.¹⁴⁴ Under this amendment one cannot be condemned

¹³⁷ *Montana Co. v. St. Louis Min. etc. Co.*, 152 U. S. 170, 14 S. Ct. 506, 38 L. ed. 398; *State v. Prather*, 19 Wash. 340, 67 Am. St. Rep. 731, 53 Pac. 345.

¹³⁸ *Pittsburgh etc. Ry. Co. v. Backus*, 154 U. S. 426, 14 S. Ct. 1114, 38 L. ed. 1031; *Indianapolis etc. R. R. Co. v. Backus*, 151 U. S. 439, 14 S. Ct. 1114, 38 L. ed. 1040; *Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 169, 17 S. Ct. 56, 41 L. ed. 369.

¹³⁹ *Kennard v. Louisiana*, 92 U. S. 483, 23 L. ed. 478.

¹⁴⁰ *Davidson v. New Orleans*, 96 U. S. 103, 24 L. ed. 616; *Iowa Central Ry. v. Iowa*, 160 U. S. 393, 16 S. Ct. 344, 40 L. ed. 467; *Martin v. Mott*, 12 Wheat. 19, 6 L. ed. 537; *United States v. Ferreira*, 13 How. 40, 14 L. ed. 42.

¹⁴¹ *Den v. Hoboken Land Co.*, 18 How. 277, 15 L. ed. 372; *State v. Julow*, 129 Mo. 163, 50 Am. St. Rep. 443, 31 S. W. 781, 29 L. R. A. 257.

¹⁴² *Chicago etc. Ry. Co. v. Chicago*, 166 U. S. 235, 17 S. Ct. 581, 41 L. ed. 979.

¹⁴³ *Ex parte Wall*, 107 U. S. 289, 2 S. Ct. 569, 27 L. ed. 552.

¹⁴⁴ *Den v. Hoboken Land etc. Co.*, 18 How. 277, 15 L. ed. 372; *Lowe v. Kansas*, 163 U. S. 85, 16 S. Ct. 1031, 41 L. ed. 78.

as to his person or property without opportunity to be heard;¹⁴⁵ but a person who has offered no defense when given an opportunity to do so cannot assert that he was denied due process by a previous judgment cutting off his defense,¹⁴⁶ and where a defendant did actually appeal and have his rights determined, he cannot claim that he was denied due process by the initial proceedings.¹⁴⁷ A hearing upon the question of the benefit to be derived from a public improvement is not necessary if the owner has notice and an opportunity to contest the assessment.¹⁴⁸ A statute which provides for a trial and notice thereof for giving a hearing, and for deliberation and judgment, and for an appeal, cannot be in violation of this amendment,¹⁴⁹ and proceedings, whether ex parte or adversary, which result in depriving a person of his private property, are not wanting in due process of law, if such person has consented thereto in advance.¹⁵⁰

Provisions for searches and seizures to aid in the collection of the revenue are not repugnant to this prohibition.¹⁵¹ So, also, processes for seizure and assessment are within the discretion of Congress,¹⁵² and a warrant issued against a public debtor for the seizure of his property under an act of Congress is valid.¹⁵³ But Congress cannot provide for the absolute forfeiture of land as a penalty for the nonpayment of taxes, without any process whatever.¹⁵⁴ A confiscation act does not authorize seizure and

¹⁴⁵ *Lasere v. Rochereau*, 17 Wall. 438, 21 L. ed. 694; *Orchard v. Alexander*, 157 U. S. 383, 15 S. Ct. 635, 39 L. ed. 737.

¹⁴⁶ *Louisville etc. R. R. v. Schmidt*, 177 U. S. 239, 20 S. Ct. 620, 44 L. ed. 747.

¹⁴⁷ *Gallup v. Schmidt*, 183 U. S. 307, 22 S. Ct. 162, 46 L. ed. 207.

¹⁴⁸ *Goodrich v. Detroit*, 184 U. S. 439, 22 S. Ct. 397, 46 L. ed. 627.

¹⁴⁹ *Pearson v. Yewdall*, 95 U. S. 294, 24 L. ed. 436.

¹⁵⁰ *Murdock v. Cincinnati*, 39 Fed. 891.

¹⁵¹ *In re Platt*, 7 Ben. 261, Fed. Cas. No. 11,212; *Murray v. Hoboken etc. Co.*, 18 How. 277, 15 L. ed. 372; *Ames v. Port Huron etc. Co.*, 11 Mich. 139, 83 Am. Dec. 731.

¹⁵² *Davidson v. New Orleans*, 96 U. S. 97, 24 L. ed. 616; *Pullan v. Kinsinger*, 2 Abb. U. S. 94, Fed. Cas. No. 14,463.

¹⁵³ *Springer v. United States*, 102 U. S. 594, 26 L. ed. 253; *Kelly v. Pittsburgh*, 104 U. S. 78, 26 L. ed. 658.

¹⁵⁴ *In re Ah Chong*, 6 Saw. 461, 2 Fed. 733; *Martin v. Snowden*, 18 Gratt. 100.

confiscation without process,¹⁵⁵ and where the assessment is arbitrary and a hearing is denied, the proceeding is void.¹⁵⁶ The bankruptcy act of July, 1898, does not, by failing to provide for notice to creditors of the filing of a petition in bankruptcy, violate this prohibition.¹⁵⁷ Congress has no power to organize a board of revision to nullify confirmed titles.¹⁵⁸

The phrase embraces only existing rules and not *ex post facto* laws;¹⁵⁹ rules existing at the time of the vesting of rights.¹⁶⁰

A seizure and confiscation of a vessel for the owner's violation of the law is valid, as the seizure is due notice;¹⁶¹ but where the vessel is not the property of the offender, a forfeiture without notice to the owner is invalid.¹⁶²

It is discretionary with a court to strike an attorney from the rolls, and such a proceeding is valid without a hearing.¹⁶³ Property may be taken by a military commander in war in case of emergency, but the case must be urgent.¹⁶⁴

— Life, Liberty or Property.

This portion of the Fifth Amendment merely declares the great common-law principle as to fundamental rights.¹⁶⁵ The

¹⁵⁵ *In re Ludwigson*, 3 Woods, 13, Fed. Cas. No. 8601; *Lavin v. Emigrant etc. Bank*, 18 Blatchf. 1. 1 Fed. 645; *Hodgson v. Millward*, 3 Grant, 406, Fed. Cas. No. 6568.

¹⁵⁶ *San Mateo Co. v. Southern Pacific R. R. Co.*, 8 Saw. 238, 13 Fed. 145; *San Francisco etc. R. R. Co. v. Dinwiddie*, 8 Saw. 312, 13 Fed. 789.

¹⁵⁷ *Hanover Nat. Bank v. Moyses*, 186 U. S. 191, 22 S. Ct. 857, 46 L. ed. 1113.

¹⁵⁸ *Reichart v. Felps*, 6 Wall. 160, 18 L. ed. 849.

¹⁵⁹ *Hoke v. Henderson*, 4 Dev. 15, 25 Am. Dec. 677; *Taylor v. Porter*, 4 Hill, 140, 40 Am. Dec. 274; *Wynehamer v. People*, 13 N. Y. 393; *Norman v. Heist*, 5 Watts & S. 171, 40 Am. Dec. 493.

¹⁶⁰ *Wilkinson v. Leland*, 2 Pet. 658, 7 L. ed. 542; *Osborn v. Nicholson*, 13 Wall. 662, 20 L. ed. 689; *Taylor v. Porter*, 4 Hill, 140, 40 Am. Dec. 274; *Wynehamer v. People*, 13 N. Y. 393.

¹⁶¹ *The Ann*, 5 Hughes, 292, 8 Fed. 923.

¹⁶² *The J. W. French*, 5 Hughes, 429, 13 Fed. 916.

¹⁶³ *Ex parte Wall*, 107 U. S. 288, 2 S. Ct. 569, 27 L. ed. 552.

¹⁶⁴ *Mitchell v. Harmony*, 13 How. 115, 14 L. ed. 75; *Dow v. Johnson*, 100 U. S. 169, 25 L. ed. 632.

¹⁶⁵ *Young v. McKenzie*, 3 Ga. 42; *Parkham v. Justice*, 9 Ga. 341; *Ervine's Appeal*, 16 Pa. St. 256, 55 Am. Dec. 499.

right to life includes the right to the body in all its completeness without dismemberment.¹⁶⁶ The "liberty" protected by the constitution means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.¹⁶⁷ The term includes also the right to acquire property.¹⁶⁸ The protection of property extends to the acquisition, possession and enjoyment of it in any way consistent with the equal rights of others and the just demands of the state.¹⁶⁹

This prohibition was intended as a constitutional safeguard in the trial of those cases for which it was stipulated the courts shall remain open, and those wherein a party shall have his remedy by due course of law.¹⁷⁰ Legislative authority cannot reach life, liberty or property except for crime, or when a sacrifice is demanded by a just regard for the public welfare.¹⁷¹

The prohibition extends to an act authorizing the arrest of a citizen without just cause,¹⁷² but not to the killing or capture

¹⁶⁶ *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323.

¹⁶⁷ *Allgeyer v. Louisiana*, 165 U. S. 589, 17 S. Ct. 427, 41 L. ed. 832; *Addyston Pipe etc. Co. v. United States*, 175 U. S. 288, 20 S. Ct. 96, 44 L. ed. 136; *Braceville Coal Co. v. People*, 147 Ill. 66, 37 Am. St. Rep. 206, 35 N. E. 62, 22 L. R. A. 340; *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 76 Am. St. Rep. 682, 53 S. W. 955, 56 L. R. A. 316; *Ritchie v. People*, 155 Ill. 98, 46 Am. St. Rep. 316, 40 N. E. 454, 29 L. R. A. 79.

¹⁶⁸ *Ritchie v. People*, 155 Ill. 98, 46 Am. St. Rep. 316, 40 N. E. 454, 29 L. R. A. 79.

¹⁶⁹ *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323.

¹⁷⁰ *Bonaparte v. Camden etc. R. R. Co.*, *Baldw.* 220, *Fed. Cas. No.* 1617; *Mason v. Kennebec etc. R. R. Co.*, 31 Me. 215.

¹⁷¹ *Atchison etc. R. R. Co. v. Baty*, 6 Neb. 37; *Taylor v. Porter*, 4 Hill, 140, 40 Am. Dec. 274; *Wilkinson v. Leland*, 2 Pet. 658, 7 L. ed. 542.

¹⁷² *Griffin v. Wilcox*, 21 Ind. 370.

of a rebel in battle.¹⁷³ No person can be deprived of his liberty on the ground of neglect to assert his rights,¹⁷⁴ and an act of Congress which makes an order of the President a sufficient defense for any act personally committed is void.¹⁷⁵

Due process of law as applied to deprivation of liberty requires that the accused be ordered to plead, or, in a proper case, that a plea of not guilty be entered for him, before his trial can rightfully proceed,¹⁷⁶ but it does not require jury trials in all cases.¹⁷⁷ Where a contempt has been committed in the presence of the court, an order for commitment may be made without notice and without allowing an opportunity to be heard,¹⁷⁸ and a statute authorizing imprisonment for contempt of orders in proceedings supplementary to execution is not void as denying due process of law.¹⁷⁹ A proceeding to strike an attorney's name from the roll of practitioners, without indictment or a regular criminal trial, is not an invasion of the constitutional guaranty.¹⁸⁰ The deportation of aliens is not a punishment, nor is it a deprivation of liberty without due process of law.¹⁸¹ The decisions of executive officers upon the facts upon which aliens base their right to land in the United States constitute due process of law.¹⁸²

173 *Norris v. Doniphan*, 4 Met. (Ky.) 385.

174 *Allen v. Sarah*, 2 Harr. 434.

175 *Johnson v. Jones*, 44 Ill. 142, 92 Am. Dec. 159.

176 *Crain v. United States*, 162 U. S. 645, 16 S. Ct. 952, 40 L. ed. 1097.

177 *Attorney General v. Jochim*, 99 Mich. 358, 41 Am. St. Rep. 606, 58 N. W. 611, 23 L. R. A. 699; *Interstate Commerce Commission v. Brimson*, 154 U. S. 489, 14 S. Ct. 1125, 38 L. ed. 1047; *Tinsley v. Anderson*, 171 U. S. 108, 18 S. Ct. 805, 43 L. ed. 91.

178 *In re Terry*, 128 U. S. 289, 9 S. Ct. 77, 32 L. ed. 405. And see *Ex parte Stricker*, 109 Fed. 145.

179 *Eikenberry v. Edwards*, 67 Iowa, 619, 56 Am. Rep. 360, 25 N. W. 832.

180 *Ex parte Wall*, 107 U. S. 288, 2 S. Ct. 569, 27 L. ed. 552.

181 *Fong Yue Ting v. United States*, 149 U. S. 731, 13 S. Ct. 1016, 37 L. ed. 905.

182 *Ekin v. United States*, 142 U. S. 660, 35 L. ed. 1146; *Lee Lung v. Patterson*, 186 U. S. 175, 22 S. Ct. 941, 46 L. ed. 1108.

The right to acquire, hold and enjoy property is protected by this clause,¹⁸³ and the protection extends to all property, whether real or personal.¹⁸⁴ The right to make and use patented machines is property which Congress is prohibited by this clause from taking from the owner.¹⁸⁵ The right of a man to his own labor, and of others to employ that labor, is property protected by the constitution.¹⁸⁶ So, also, the right of property involves, as one of its essential attributes, the right, not only to contract, but also to terminate contracts.¹⁸⁷ To constitute a violation of the prohibition against deprivation of property, it must appear that the party complaining had property in the thing of which he is alleged to have been deprived,¹⁸⁸ and it must also appear that the taking complained of was direct and not merely the consequential injury resulting from the exercise of a lawful power.¹⁸⁹

The legislature may impose just and reasonable restraints upon the use of property.¹⁹⁰ So statutes regulating the use, or

¹⁸³ *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323; *Ritchie v. People*, 155 Ill. 98, 40 Am. St. Rep. 316, 40 N. E. 454, 29 L. R. A. 79; *Commonwealth v. Bacon*, 13 Bush, 214.

¹⁸⁴ *Ervine's Appeal*, 16 Pa. St. 256, 55 Am. Dec. 499.

¹⁸⁵ *Bloomer v. McQuewan*, 14 How. 553, 14 L. ed. 532; *Cassidy v. Hunt*, 75 Fed. 1017.

¹⁸⁶ *Braceville Coal Co. v. People*, 147 Ill. 66, 37 Am. St. Rep. 206, 35 N. E. 62, 22 L. R. A. 340.

¹⁸⁷ *Gillespie v. People*, 188 Ill. 176, 80 Am. St. Rep. 176, 58 N. E. 1007, 52 L. R. A. 283; *Ritchie v. People*, 155 Ill. 98, 40 Am. St. Rep. 316, 40 N. E. 454, 29 L. R. A. 79.

¹⁸⁸ *New Orleans v. New Orleans Waterworks*, 142 U. S. 88, 12 S. Ct. 142, 36 L. ed. 943; *Bier v. McGehee*, 148 U. S. 140, 13 S. Ct. 581, 37 L. ed. 397; *Emblen v. Lincoln Land Co.*, 184 U. S. 660, 22 S. Ct. 583, 46 L. ed. 736.

¹⁸⁹ *Legal Tender Cases*, 12 Wall. 551, 20 L. ed. 287; *Meyer v. Richmond*, 172 U. S. 94, 19 S. Ct. 106, 43 L. ed. 374.

¹⁹⁰ *Railroad Co. v. Richmond*, 96 U. S. 529, 24 L. ed. 734; *Railroad Commission Cases*, 116 U. S. 335, 29 L. ed. 636; *New York etc. R. R. Co.'s Appeal*, 62 Conn. 538, 26 Atl. 126; *Hockett v. State*, 105 Ind. 259, 55 Am. Rep. 207, 5 N. E. 183; *South Covington etc. R. R. Co. v. Berry*, 93 Ky. 49, 40 Am. St. Rep. 165, 18 S. W. 1027, 15 L. R. A. 604; *Commonwealth v. Alger*, 7 Cush. 84; *State v. Yopp*, 97 N. C. 477, 2 Am. St. Rep. 305, 2 S. E. 458.

even the price of the use, of private property do not necessarily deprive the owner of his property without due process of law.¹⁹¹

The amendment does not strip the government of power to enact regulations for the protection of the public health and safety,¹⁹² and legislation looking to this end is not open to objection if it be general in its operation on the subjects to which it relates and is enforceable in the usual modes by process or proceedings applicable to the nature of the case.¹⁹³

In judging what is due process of law in the taking of property regard is to be had to the cause and the object of the taking,¹⁹⁴ and if suitable to the particular case it will be deemed due process; otherwise if arbitrary, oppressive or unjust.¹⁹⁵ The legislature cannot take property from one individual and give it to another.¹⁹⁶

The constitutional guaranty carries with it all that effectuates and renders complete the unrestrained enjoyment of that guaranty,¹⁹⁷ and it is expected that the courts will enforce it even against persons assuming to act under the authority of the government.¹⁹⁸

— Eminent Domain.

The right of eminent domain is paramount over all private rights vested under the government which, by necessary implication, are held in subordination to this power and must yield

¹⁹¹ *Munn v. Illinois*, 94 U. S. 125, 24 L. ed. 77.

¹⁹² *Compagnie Francaise etc. v. Louisiana State Board*, 186 U. S. 393, 22 S. Ct. 811, 46 L. ed. 1209.

¹⁹³ *Dent v. West Virginia*, 129 U. S. 124, 9 S. Ct. 231, 32 L. ed. 623.

¹⁹⁴ *Wulzen v. Board of Supervisors*, 101 Cal. 15, 40 Am. St. Rep. 17, 35 Pac. 353.

¹⁹⁵ *Lent v. Tillson*, 140 U. S. 327, 11 S. Ct. 825, 35 L. ed. 413; *Origet v. Hedden*, 155 U. S. 238, 15 S. Ct. 96, 39 L. ed. 130; *Scott v. Toledo*, 36 Fed. 394; *Meyers v. Shields*, 61 Fed. 718; *Fort Smith v. Dodson*, 46 Ark. 300, 55 Am. Rep. 592; *Brown v. Denver*, 7 Colo. 312, 3 Pac. 459.

¹⁹⁶ *Turner v. Althaus*, 6 Neb. 54.

¹⁹⁷ *State v. Julow*, 129 Mo. 163, 50 Am. St. Rep. 443, 31 S. W. 781, 29 L. R. A. 257.

¹⁹⁸ *United States v. Lee*, 106 U. S. 196, 1 S. Ct. 240, 27 L. ed. 171.

in every instance to its proper exercise.¹⁹⁹ It is the power to take property for public use.²⁰⁰ The right is inseparable from sovereignty, unless denied by fundamental law.²⁰¹ Every citizen holds his property upon the implied condition that it will be surrendered to the government when public necessity demands it,²⁰² and necessity alone is the foundation of the power to take.²⁰³

Where the use is public, the necessity or expediency of appropriating any particular property is within the discretion of Congress.²⁰⁴ Where there is an apparent public interest to be subserved, the legislature, or person or body it may designate, is the proper judge of the necessity.²⁰⁵ Under the police power persons and property are subject to all kinds of restrictions and burdens to secure the general comfort, health and prosperity,²⁰⁶ and the power of eminent domain is likewise unimpaired by this

¹⁹⁹ *West River Bridge Co. v. Dix*, 6 How. 532, 12 L. ed. 535.

²⁰⁰ *Boom Company v. Patterson*, 98 U. S. 406, 25 L. ed. 206; *Sweet v. Rechel*, 159 U. S. 399, 16 S. Ct. 43, 40 L. ed. 188.

²⁰¹ *Kohl v. United States*, 91 U. S. 371, 23 L. ed. 449; *Searl v. School Dist. Lake Co.*, 133 U. S. 562, 10 S. Ct. 374, 33 L. ed. 740; *Adirondack Ry. Co. v. New York*, 176 U. S. 349, 20 S. Ct. 460, 44 L. ed. 492.

²⁰² *Little Rock etc. R. R. Co. v. Woodruff*, 49 Ark. 381, 4 Am. St. Rep. 51, 5 S. W. 792; *Carthage v. Frederick*, 122 N. Y. 268, 19 Am. St. Rep. 490, 29 N. E. 480, 10 L. R. A. 178.

²⁰³ *Kohl v. United States*, 91 U. S. 371, 23 L. ed. 449; *California v. Central Pac. R. R. Co.*, 127 U. S. 40, 8 S. Ct. 1073, 32 L. ed. 150; *Searl v. School Dist. Lake Co.*, 133 U. S. 562, 10 S. Ct. 374, 33 L. ed. 740.

²⁰⁴ *Boom Company v. Patterson*, 98 U. S. 406, 25 L. ed. 206; *United States v. Gettysburg etc. Ry. Co.*, 160 U. S. 685, 16 S. Ct. 427, 40 L. ed. 576; *Shoemaker v. United States*, 147 U. S. 298, 13 S. Ct. 691, 37 L. ed. 170; *Illinois etc. R. R. Co. v. Chicago*, 141 Ill. 602, 30 N. E. 1047, 17 L. R. A. 530; *Lynch v. Forbes*, 161 Mass. 309, 42 Am. St. Rep. 404, 37 N. E. 437; *Avery v. Fox*, 1 Abb. U. S. 246, Fed. Cas. No. 674; *Swan v. Williams*, 2 Mich. 427.

²⁰⁵ *Newcomb v. Smith*, 1 Chand. 71.

²⁰⁶ *Slaughter-house Cases*, 16 Wall. 36, 21 L. ed. 394; *Munn v. Illinois*, 94 U. S. 123, 24 L. ed. 77; *Thorpe v. Rutland etc. R. R. Co.*, 27 Vt. 140, 62 Am. Dec. 625; *Bertholf v. O'Beilly*, 74 N. Y. 509, 30 Am. Rep. 323.

provision.²⁰⁷ The terms of the constitution are declaratory and not restrictive.²⁰⁸

The manner of exercising the right of eminent domain is, in the absence of contrary constitutional provision, a matter of legislative discretion,²⁰⁹ and where power is given to an executive officer to obtain land by condemnation he is impliedly given power to do so by any competent means.²¹⁰ Governments more frequently effect these objects through the aid of corporations than by their immediate agents.²¹¹ The power to take private property is limited to public purposes.²¹² When the legislature has declared a use to be public its judgment will, in general, be respected by the courts;²¹³ but such declaration is not final as to the character of the use, and the question is ultimately judicial.²¹⁴

Public use is a use concerning the whole community as distinguished from particular individuals,²¹⁵ but it is not essential that any considerable portion of the community should directly enjoy or participate in an improvement in order to render

²⁰⁷ *West River Bridge Co. v. Dix*, 6 How. 539, 12 L. ed. 535; *Dyer v. Tuscaloosa Br. Co.*, 2 Port. 296, 27 Am. Dec. 655.

²⁰⁸ *Young v. McKenzie*, 3 Ga. 31.

²⁰⁹ *Secombe v. Railroad Co.*, 23 Wall. 118, 23 L. ed. 67; *Chappell v. United States*, 81 Fed. 764.

²¹⁰ *Kohl v. United States*, 91 U. S. 375, 23 L. ed. 449.

²¹¹ *Chesapeake & Ohio Co. v. Key*, 3 Cr. C. C. 599, Fed. Cas. No. 2649; *Baltimore etc. R. R. Co. v. Van Ness*, 4 Cr. C. C. 595, Fed. Cas. No. 830; *Swan v. Williams*, 2 Mich. 427.

²¹² *United States v. Chicago*, 7 How. 195, 12 L. ed. 660; *Commissioners v. Lucas*, 93 U. S. 114, 23 L. ed. 822; *Kaukauna Water Co. v. Green Bay etc. Canal Co.*, 142 U. S. 273, 12 S. Ct. 173, 35 L. ed. 1004; *United States v. Ames*, 1 Wood. & M. 76.

²¹³ *United States v. Gettysburg etc. Ry. Co.*, 160 U. S. 685, 16 S. Ct. 427, 40 L. ed. 576; *Chicago etc. R. R. v. Morehouse*, 112 Wis. 1, 88 Am. St. Rep. 918, 87 N. W. 849, 56 L. R. A. 240.

²¹⁴ *Shoemaker v. United States*, 147 U. S. 298, 13 S. Ct. 691, 37 L. ed. 170; *Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 160, 17 S. Ct. 56, 41 L. ed. 369; *Fanning v. Gilliland*, 37 Or. 369, 82 Am. St. Rep. 758, 61 Pac. 636.

²¹⁵ *Gilmer v. Lime Point*, 18 Cal. 229; *Heyneman v. Blake*, 19 Cal. 579.

the use public,²¹⁶ nor is it necessary that the use be without charge to anyone.²¹⁷

The legislature cannot take private property for purely private uses.²¹⁸ So a state cannot appropriate private property for the sole purpose of leasing it to a manufacturing concern,²¹⁹ and a tax law in aid of a private enterprise or business is void.²²⁰ The taking of property for the construction of a railroad is a public necessity,²²¹ but a railroad company cannot condemn a site for the erection of manufactories of railroad cars.²²² On the other hand, a statute authorizing the taking of land for millsites and dams has been upheld as valid.²²³ The improvement of the navigation of a river is a public purpose and the sequestration of land therefor is a proper exercise of the power of eminent domain.²²⁴ To irrigate and thus make possible the cultivation of otherwise worthless land is a public purpose for which land may be condemned.²²⁵ Land taken for a public park is taken for a public use,²²⁶ and the United States had

²¹⁶ *Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 162, 17 S. Ct. 56, 41 L. ed. 369.

²¹⁷ *Long Island etc. Supply Co. v. Brooklyn*, 166 U. S. 694, 17 S. Ct. 718, 41 L. ed. 1165.

²¹⁸ *Kaukauna Water etc. Co. v. Green Bay etc. Canal Co.*, 142 U. S. 273, 12 S. Ct. 173, 35 L. ed. 1004; *Consolidated Chan. Co. v. Central Pacific R. R. Co.*, 51 Cal. 269; *Newcomb v. Smith*, 1 Chand. 71.

²¹⁹ *Kaukauna Water etc. Co. v. Green Bay etc. Canal Co.*, 142 U. S. 273, 12 S. Ct. 173, 35 L. ed. 1004.

²²⁰ *Pumpelly v. Green Bay Co.*, 13 Wall. 177, 20 L. ed. 557; *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323; *Weisner v. Village of Douglass*, 64 N. Y. 92, 21 Am. Rep. 586.

²²¹ *Secombe v. Railroad*, 23 Wall. 118, 23 L. ed. 67; *Huling v. Kaw Valley Ry. Co.*, 130 U. S. 564, 9 S. Ct. 605, 32 L. ed. 1045; *Cherokee Nation v. Southern etc. R. R. Co.*, 39 Fed. 914; *Central Ry. Co. v. Pennsylvania Ry. Co.*, 31 N. J. Eq. 492.

²²² *Eldridge v. Smith*, 34 Vt. 484.

²²³ *Newcomb v. Smith*, 1 Chand. 71.

²²⁴ *Kaukauna Water Co. v. Green Bay Canal Co.*, 142 U. S. 272, 12 S. Ct. 173, 35 L. ed. 1004.

²²⁵ *Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 161, 17 S. Ct. 56, 41 L. ed. 369.

²²⁶ *Shoemaker v. United States*, 147 U. S. 297, 13 S. Ct. 361; 37

power to condemn land for the surveying, locating, marking and preserving the lines of battle at Gettysburg.²²⁷ In all cases the question whether the use is public depends upon the object aimed at.²²⁸

While a remote and consequential injury to property is not a "taking" requiring compensation,²²⁹ yet where real estate is actually invaded by superinduced additions of water, earth, sand, or other material, or by having any artificial structure placed upon it so as to destroy or effectually impair its usefulness, compensation must be made.²³⁰ A serious interruption to the common and necessary use of property is equivalent to a taking.²³¹ So the government is liable for the destruction of a well on land adjacent to that taken for public works,²³² and the construction of a dam which caused water to overflow land and render it unfit for cultivation constitutes a taking of the land.²³³ So, also as to the diversion of a stream causing a deposit of earth on riparian land and erosion of the bank,²³⁴

L. ed. 170; *Kansas City v. Ward*, 134 Mo. 177, 35 S. W. 601; *Kansas City v. Bacon*, 147 Mo. 273, 48 S. W. 863; *People v. Adirondack Ry.*, 160 N. Y. 248, 54 N. E. 696.

²²⁷ *United States v. Gettysburg etc. Ry. Co.*, 160 U. S. 679, 16 S. Ct. 427, 40 L. ed. 576.

²²⁸ *Tuthill, Matter of*, 163 N. Y. 133, 79 Am. St. Rep. 574, 57 N. E. 303, 49 L. R. A. 781.

²²⁹ *United States v. Alexander*, 148 U. S. 187, 13 S. Ct. 529, 37 L. ed. 415.

²³⁰ *Pumpelly v. Green Bay Co.*, 13 Wall. 178, 20 L. ed. 557; *United States v. Lynah*, 188 U. S. 445, 23 S. Ct. 349, 47 L. ed. 539; *United States v. Williams*, 188 U. S. 485, 23 S. Ct. 363, 47 L. ed. 554; *Woodruff v. North Bloomfield G. M. Co.*, 9 Saw. 508, 18 Fed. 783; *Hollingsworth Parish v. Tensas*, 4 Woods, 288, 17 Fed. 115; *Payne v. Kansas etc. R. R.*, 46 Fed. 556; *King v. United States*, 59 Fed. 12; *Central Trust Co. v. Hennen*, 90 Fed. 597; *Matter of Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636.

²³¹ *United States v. Alexander*, 148 U. S. 187, 13 S. Ct. 529, 37 L. ed. 415.

²³² *United States v. Truesdell*, 148 U. S. 196, 13 S. Ct. 532, 37 L. ed. 419.

²³³ *King v. United States*, 59 Fed. 12; *Head v. Amoskeag Mfg. Co.*, 113 U. S. 26, 5 S. Ct. 448, 28 L. ed. 889.

²³⁴ *Weaver v. Mississippi etc. Co.*, 28 Minn. 539.

and the building of a dyke in a stream, thereby diverting the stream from land which derived its value from its water frontage.²³⁵ Any direct damage caused to adjacent property by the construction of a railroad is a taking within the meaning of this clause.²³⁶

A city is liable to adjacent property owners for such special damages as they sustain above the common injury resulting from a public improvement.²³⁷ The damage caused by the change of a street grade which backed water up on the abutting land renders a city liable.²³⁸ A city is liable for compensatory damages where the erection of an embankment in front of a lot in grading a street destroys the use of the lot,²³⁹ and where a viaduct is erected which cuts off access to a street except by a stairway, the owner of the land is entitled to compensation,²⁴⁰ and a county is liable to a riparian owner for damages caused to land by the erection of a bridge which caused the washing away of earth.²⁴¹ A municipality, in constructing a sewer, cannot suffer sewage to be discharged on private land because of the incompleteness of the sewer, without making compensation.²⁴² The cutting of a sewer which causes the flooding of property renders a city liable to the owner.²⁴³

²³⁵ *Myers v. St. Louis*, 8 Mo. App. 275.

²³⁶ *Pennsylvania R. R. Co. v. Miller*, 132 U. S. 83, 10 S. Ct. 37, 33 L. ed. 267; *Payne v. Kansas etc. R. R. Co.*, 46 Fed. 556; *Seaton v. Norfolk etc. R. R. Co.*, 111 N. C. 284, 16 S. E. 183; *Gainesville etc. Ry. Co. v. Hall*, 78 Tex. 169, 22 Am. St. Rep. 42, 14 S. W. 259, 9 L. R. A. 298; *Sheehy v. Kansas City Ry. Co.*, 94 Mo. 574, 4 Am. St. Rep. 396, 7 S. W. 579.

²³⁷ *Reardon v. San Francisco*, 66 Cal. 492, 56 Am. Rep. 109, 6 Pac. 317; *Robert v. Sadler*, 104 N. Y. 232, 58 Am. Rep. 499, 10 N. E. 429.

²³⁸ *Kemper v. Louisville*, 14 Bush, 92; *Coniff v. San Francisco*, 67 Cal. 47, 7 Pac. 44; *Inman v. Tripp*, 11 R. I. 525, 23 Am. Rep. 523. But

²³⁹ *Vanderlip v. Grand Rapids*, 73 Mich. 535, 16 Am. St. Rep. 607, Pac. 390, 62 Pac. 209, 50 L. R. A. 389.

²³⁹ *Vanderlip v. Grand Rapids*, 73 Mich. 535, 16 Am. St. Rep. 60, 41 N. W. 682, 3 L. R. A. 247.

²⁴⁰ *Rigney v. Chicago*, 102 Ill. 72.

²⁴¹ *Tyler v. Tehama County*, 109 Cal. 623, 42 Pac. 242.

²⁴² *Chattanooga v. Dowling*, 101 Tenn. 345, 47 S. W. 700.

²⁴³ *Ashley v. Port Huron*, 35 Mich. 301, 24 Am. Rep. 536.

This guarantee is intended for the protection of a right rather than for the redress of a wrong,²⁴⁴ and the government cannot, by abstaining from the absolute conversion of property, inflict irreparable and permanent injury on it, without making compensation, on a plea that it is not "taken" for public use.²⁴⁵ But extraordinary and unforeseen occasions arise in cases of impending danger when private property may be appropriated, and if the necessity be extreme and imperative this prohibition does not apply,²⁴⁶ as in case of military necessity.²⁴⁷ The right to raze houses to prevent the spread of a conflagration rests upon public necessity, and no one is bound to reimburse the owner for his loss.²⁴⁸ If movable property is taken in good faith by a military commander, the title vests in the government, although it subsequently appears that the taking was not absolutely necessary;²⁴⁹ the courts cannot interfere with such acts.²⁵⁰ The discharge of city sewage into a stream which during an unusual flood overflows its banks and carries sewage out on the land of a riparian owner, is not such a taking of property as necessitates compensation;²⁵¹ the injury in such a case is too remote.²⁵² Every attempt of a public officer to take private property for a public use, unless justified by some pressing

²⁴⁴ *Stearns v. Barre*, 73 Vt. 281, 87 Am. St. Rep. 721, 50 Atl. 1086, 58 L. R. A. 240.

²⁴⁵ *Pumpelly v. Green Bay Co.*, 13 Wall. 178, 20 L. ed. 557; *Johnson's Case*, 8 Ct. of Cl. 843.

²⁴⁶ *United States v. Russell*, 13 Wall. 623, 20 L. ed. 474; *Taylor v. Railroad Co.*, 6 Cold. 646.

²⁴⁷ *Dow v. Johnson*, 100 U. S. 167, 25 L. ed. 632; *Underhill v. Hernandez*, 168 U. S. 253, 18 S. Ct. 84, 42 L. ed. 456; *Mitchell v. Harmony*, 13 How. 115, 14 L. ed. 75; *Clark v. Mitchell*, 64 Mo. 564.

²⁴⁸ *Ralli v. Troop*, 157 U. S. 405, 15 S. Ct. 457, 39 L. ed. 742; *Bishop v. City of Macon*, 7 Ga. 200, 1 Am. Dec. 400.

²⁴⁹ *Taylor v. Railroad Co.*, 6 Cold. 646; *Williams v. Wickerman*, 44 Mo. 484.

²⁵⁰ *Newcomb v. Smith*, 1 Chand. 71.

²⁵¹ *Valparaiso v. Hagen*, 153 Ind. 337, 74 Am. St. Rep. 305, 51 N. E. 1062, 48 L. R. A. 707.

²⁵² *United States v. Alexander*, 148 U. S. 187, 13 S. Ct. 529, 37 L. ed. 415.

necessity, is a simple trespass, for which the government is not responsible.²⁵³

Under this power all property, whether private or corporate, may be taken, on a public necessity, and on making compensation.²⁵⁴ A franchise is property subject to be taken by eminent domain just as any other property.²⁵⁵ In all such cases the power acts on the property and not on the contract,²⁵⁶ and the taking of a franchise as property does not terminate it as a contract but merely appropriates the contract to public use;²⁵⁷ it not only does not impair the obligation of the contract but recognizes it to the fullest extent.²⁵⁸ The legislature may authorize the construction of one railway across another,²⁵⁹ and land devoted to one public use may be condemned for another,²⁶⁰ and a bridge held by a corporation under a state charter may be taken as a part of a public road.²⁶¹ So also a city may take and operate a water supply system owned under a contract

²⁵³ *Pitcher v. United States*, 1 Nott & H. 7.

²⁵⁴ *Planters' Bank v. Sharp*, 6 How. 330, 12 L. ed. 447; *Terre Haute v. E. & T. H. R. R. Co.*, 149 Ind. 180, 46 N. E. 78, 37 L. R. A. 189.

²⁵⁵ *Richmond etc. R. R. Co. v. Louisiana etc. R. R. Co.*, 13 How. 83, 14 L. ed. 55; *Greenwood v. Freight Co.*, 105 U. S. 22, 26 L. ed. 961; *Long Island etc. Co. v. Brooklyn*, 166 U. S. 693, 17 S. Ct. 721, 41 L. ed. 1165; *Turnpike Road v. Railroad Co.*, 81 Md. 256, 31 Atl. 855; *Central Bridge Corp. v. Lowell*, 4 Gray, 481; *Scranton Gas Co. v. Northern C. & I. Co.*, 192 Pa. St. 80, 73 Am. St. Rep. 798, 43 Atl. 470; *Appeal of Pittsburgh etc. R. R. Co.*, 122 Pa. St. 511, 9 Am. St. Rep. 128, 6 Atl. 564.

²⁵⁶ *West River Bridge Co. v. Dix*, 6 How. 536, 12 L. ed. 535.

²⁵⁷ *Long Island Water etc. Co. v. Brooklyn*, 166 U. S. 691, 17 S. Ct. 718, 41 L. ed. 1165.

²⁵⁸ *West River Bridge Co. v. Dix*, 6 How. 507, 12 L. ed. 535; *Greenwood v. Freight Co.*, 105 U. S. 13, 26 L. ed. 961; *Enfield Tonnage Bridge Co. v. Hartford etc. R. R. Co.*, 17 Conn. 454, 44 Am. Dec. 556; *Haverill Bridge Props. v. County Commissioners*, 103 Mass. 120, 4 Am. Rep. 518.

²⁵⁹ *Richmond etc. R. R. v. Louisiana etc. R. R.*, 13 How. 83, 14 L. ed. 55.

²⁶⁰ *United States v. Gettysburg Electric Ry. Co.*, 160 U. S. 685, 16 S. Ct. 427, 40 L. ed. 576.

²⁶¹ *West River Bridge Co. v. Dix*, 6 How. 529, 12 L. ed. 535.

with the city.^{261a} Property in patents may be taken in the exercise of this power.²⁶²

The United States may condemn land for governmental purposes free from any regulation or control by the states.²⁶³ But the United States cannot thereby interfere with the exercise by the states of their own sovereign right of eminent domain.²⁶⁴ It is immaterial that the land desired is within the territory of a state,²⁶⁵ or within territory occupied by an Indian tribe,²⁶⁶ and the concurrence of the state is not necessary.²⁶⁷ It is immaterial whether the fee is in the state or in private persons.²⁶⁸ The power to condemn land for federal purposes is exclusively in the federal government and cannot be exercised by a state in its behalf.²⁶⁹

— Compensation for Property Taken.

The right to take private property for public use reaches back of all constitutional provisions, and the right to compensation for property so taken is incident to the exercise of that power; they exist as parts of one principle.²⁷⁰ A condition pre-

^{261a} Long Island etc. Supply Co. v. Brooklyn, 166 U. S. 689, 17 S. Ct. 718, 41 L. ed. 1165.

²⁶² Campbell v. James, 17 Blatchf. 42, Fed. Cas. No. 2361.

²⁶³ Kohl v. United States, 91 U. S. 367, 23 L. ed. 449; Trombley v. Humphrey, 23 Mich. 471; Darlington v. United States, 82 Pa. St. 382, 22 Am. Rep. 766.

²⁶⁴ Boom Company v. Patterson, 98 U. S. 406, 25 L. ed. 206.

²⁶⁵ United States v. Fox, 94 U. S. 320, 24 L. ed. 192; Luxton v. North River Bridge Co., 153 U. S. 529, 14 S. Ct. 891, 38 L. ed. 808.

²⁶⁶ Cherokee Nation v. Kansas R. R. Co., 135 U. S. 656, 10 S. Ct. 965, 34 L. ed. 295.

²⁶⁷ Van Brocklin v. Tennessee, 117 U. S. 154, 6 S. Ct. 670, 29 L. ed. 845; Luxton v. North River Bridge Co., 153 U. S. 529, 14 S. Ct. 891, 38 L. ed. 808.

²⁶⁸ Monongahela Nav. Co. v. United States, 148 U. S. 342, 13 S. Ct. 622, 37 L. ed. 463.

²⁶⁹ Kohl v. United States, 91 U. S. 373, 23 L. ed. 449; Darlington v. United States, 82 Pa. St. 382, 22 Am. Rep. 766. But see Gilmer v. Lime Point, 18 Cal. 229; Burt v. Merchants' Ins. Co., 106 Mass. 356, 8 Am. Rep. 339.

²⁷⁰ Pumpelly v. Green Bay Co., 13 Wall. 182, 24 L. ed. 557; Monongahela Nav. Co. v. United States, 148 U. S. 324, 13 S. Ct. 622, 37

cedent to the exercise of the power of eminent domain is provision for reasonable compensation to the owner.²⁷¹ The constitution nowhere recognizes necessity as authority for taking private property for public use without compensation,²⁷² and the Fifth Amendment expressly places the United States under an obligation to compensate the owner for any property or property right taken for public use,²⁷³ regardless of any benefit the owner may receive in common with the public.²⁷⁴ Accordingly, whenever private property is taken an implied obligation to make compensation to the owner at once arises.²⁷⁵

The making of compensation must be as absolutely certain as that the property is taken.²⁷⁶ There must be a condemnation or an agreement consummated.²⁷⁷

Every person is entitled to notice and an opportunity to be heard in a proceeding to condemn his property for public use;²⁷⁸ but if Congress provides a special tribunal for hearings in such cases no other can be resorted to.²⁷⁹ Congress may designate

L. ed. 463; *Baumann v. Ross*, 167 U. S. 574, 17 S. Ct. 966, 42 L. ed. 270.

²⁷¹ *Sweet v. Rechel*, 159 U. S. 399, 16 S. Ct. 43, 40 L. ed. 183; *Barron v. Mayor of Baltimore*, 7 Pet. 243, 8 L. ed. 672; *Danville etc. R. R. Co. v. Commonwealth*, 73 Pa. St. 29; *Young v. McKenzie*, 3 Ga. 31; *United States v. Dunnington*, 146 U. S. 344, 13 S. Ct. 79, 36 L. ed. 996.

²⁷² *Norris v. Doniphan*, 4 Met. (Ky.) 385; *Corbin v. Marsh*, 2 Duvall, 193.

²⁷³ *Great Falls Mfg. Co. v. Attorney General*, 124 U. S. 597, 8 S. Ct. 631, 31 L. ed. 527; *Monongahela Nav. Co. v. United States*, 148 U. S. 326, 13 S. Ct. 622, 37 L. ed. 463; *Russell's Case*, 7 Ct. of Cl. 227.

²⁷⁴ *Monongahela Nav. Co. v. United States*, 148 U. S. 326, 13 S. Ct. 622, 37 L. ed. 463; *People v. Mayor of Brooklyn*, 6 Barb. 309; *Jacob v. Louisville*, 9 Dana, 114, 33 Am. Dec. 533.

²⁷⁵ *United States v. Great Falls Mfg. Co.*, 112 U. S. 654, 5 S. Ct. 806, 28 L. ed. 846; *Hirsch's Case*, 15 Ct. of Cl. 385.

²⁷⁶ *Young v. Harrison*, 6 Ga. 130; *Carr v. Georgia etc. R. R. Co.*, 1 Kelly, 524; *Miller v. Craig*, 3 Stock. 106; *Buffalo etc. R. R. Co. v. Ferris*, 26 Tex. 588; *Bloodgood v. Mohawk etc. R. R. Co.*, 18 Wend. 9, 31 Am. Dec. 313.

²⁷⁷ *Whitman v. Boston etc. R. R. Co.*, 85 Mass. 138.

²⁷⁸ *Burns v. Multnomah Ry. Co.*, 8 Saw. 543, 15 Fed. 177; *Wilburn v. McCalley*, 63 Ala. 436; *Zeigler v. S. N. R. R. Co.*, 58 Ala. 594.

²⁷⁹ *Meade v. United States*, 2 Ct. of Cl. 224.

nate directly or authorize the state to designate a tribunal to determine the compensation to be awarded,²⁸⁰ but where no court is designated a common-law action will lie in the appropriate district court.²⁸¹ A statute makes adequate provision for compensation when it directs the ascertainment of damages without delay in a legal mode, and gives the owner a right to a judgment collectible by legal process.²⁸² The provision for compensation does not require actual payment in advance of occupancy, if reasonably secured, but title does not pass until payment.²⁸³ Accordingly, the government discharges its full duty to the owner by depositing the amount of the award in court.²⁸⁴ A judgment unpaid and unsecured is not compensation.²⁸⁵

A condemnation proceeding is a suit at law,²⁸⁶ but the proceedings may be had before the court or commissioners, as designated by the legislature.²⁸⁷ A statute allowing separate trials to owners of each parcel condemned does not contemplate a separate trial for each owner of an interest in each parcel.²⁸⁸

The measure of compensation is the market value of land, with reference to its availability for present and future valuable uses.²⁸⁹ Just compensation means just in regard to the public

²⁸⁰ *United States v. Jones*, 109 U. S. 515, 3 S. Ct. 346, 27 L. ed. 1015; *Chappell v. United States*, 160 U. S. 510, 10 S. Ct. 400, 40 L. ed. 510; *Sweaney v. United States*, 62 Wis. 400, 22 N. W. 610.

²⁸¹ *High Bridge Lumber Co. v. United States*, 69 Fed. 325.

²⁸² *Sweet v. Rechel*, 159 U. S. 402, 16 S. Ct. 43, 40 L. ed. 183.

²⁸³ *Cherokee Nation v. Kansas Ry. Co.*, 135 U. S. 659, 10 S. Ct. 963, 34 L. ed. 295; *Sweet v. Rechel*, 159 U. S. 402, 16 S. Ct. 43, 40 L. ed. 183; *Bauman v. Ross*, 167 U. S. 599, 17 S. Ct. 966, 42 L. ed. 270; *Backus v. Fort Street etc. Co.*, 169 U. S. 567, 18 S. Ct. 445, 42 L. ed. 853.

²⁸⁴ *United States v. Dunnington*, 146 U. S. 353, 13 S. Ct. 79, 36 L. ed. 996.

²⁸⁵ *Pryzbylowicz v. Missouri Ry. Co.*, 3 McCrary, 586.

²⁸⁶ *Kohl v. United States*, 91 U. S. 375, 23 L. ed. 449; *Searl v. School District*, 124 U. S. 199, 8 S. Ct. 460, 31 L. ed. 415; *Chappell v. United States*, 160 U. S. 513, 10 S. Ct. 400, 40 L. ed. 510.

²⁸⁷ *United States v. Jones*, 109 U. S. 519, 3 S. Ct. 346, 27 L. ed. 1015; *Bauman v. Ross*, 167 U. S. 593, 17 S. Ct. 966, 42 L. ed. 270.

²⁸⁸ *Kohl v. United States*, 91 U. S. 377, 23 L. ed. 449.

²⁸⁹ *Boom Co. v. Patterson*, 98 U. S. 408, 25 L. ed. 206; *Great Falls*

as well as the individual,²⁹⁰ the means of ascertaining which is to be in the discretion of Congress;²⁹¹ but the value of the property to the owner is the criterion of compensation and not the value to the government; so if a lock and dam are taken, the franchise to collect tolls is also taken, and the fact that the franchise is of no value to the government cannot deprive the owner of his right to compensation for it.^{291a} The loss caused by the appropriation is also to be considered,²⁹² and the measure of compensation due a railway company for opening a street across its tracks is the decrease in the value of the use of the right of way arising from the use of the street.²⁹³ Improvements by a riparian owner cannot be taken by a railroad company without compensation, although such improvements were erected in violation of an act of Congress.²⁹⁴ The owner is entitled to the full value of his property taken,²⁹⁵ but while it is true that a full and perfect equivalent must be given independently of any benefit the owner may receive in common with the public,²⁹⁶ yet direct benefit or injury to the remaining land should be considered in making the award.²⁹⁷ It is no defense to a condemnation proceeding that the amount appropriated by Congress is insufficient to cover the value of the

Mfg. Co. v. Attorney General, 124 U. S. 595, 8 S. Ct. 631, 31 L. ed. 527; *Lafin v. Chicago etc. Ry. Co.*, 33 Fed. 420; *Santa Ana v. Harlin*, 99 Cal. 542, 34 Pac. 226; *West Virginia etc. R. R. v. Gibson*, 94 Ky. 347, 21 S. W. 1055.

²⁹⁰ *Chesapeake & Ohio Canal Co. v. Key*, 3 Cr. C. C. 599, Fed. Cas. No. 2649.

²⁹¹ *Chesapeake & Ohio Canal Co. v. Key*, 3 Cr. C. C. 599, Fed. Cas. No. 2649; *Swan v. Williams*, 2 Mich. 427. And see *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77.

^{291a} *Monongahela Nav. Co. v. United States*, 148 U. S. 343, 13 S. Ct. 622, 37 L. ed. 463.

²⁹² *Bauman v. Ross*, 167 U. S. 574, 17 S. Ct. 966, 42 L. ed. 270.

²⁹³ *Chicago etc. Ry. Co. v. Chicago*, 166 U. S. 250, 17 S. Ct. 531, 41 L. ed. 994.

²⁹⁴ *Railway Co. v. Renwick*, 102 U. S. 182, 26 L. ed. 51.

²⁹⁵ *Peck's Case*, 14 Ct. of Cl. 84.

²⁹⁶ *Monongahela Nav. Co. v. United States*, 148 U. S. 326, 13 S. Ct. 622, 37 L. ed. 463.

²⁹⁷ *Bauman v. Ross*, 167 U. S. 582, 17 S. Ct. 979, 42 L. ed. 270.

property;²⁹⁸ the measure of compensation is a judicial question, and the court may disregard the legislative direction as to the compensation to be allowed.²⁹⁹

²⁹⁸ *United States v. Gettysburg etc. Ry. Co.*, 160 U. S. 684, 16 S. Ct. 431, 40 L. ed. 576.

²⁹⁹ *Monongahela Nav. Co. v. United States*, 148 U. S. 327, 13 S. Ct. 622, 37 L. ed. 463; *New York etc. R. R. Co. v. Long*, 69 Conn. 437, 37 Atl. 1073.

ARTICLE VI.

MODE OF TRIAL IN CRIMINAL PROCEEDING.

ACCUSED ENTITLED TO SPEEDY TRIAL; TO CONFRONT WITNESSES;
TO HAVE COUNSEL; PLACE OF TRIAL, ETC.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

Scope.

The prohibitions contained in the Sixth Amendment were designed to prevent interference with the rights of the states and their citizens, and are restrictive of the power of the federal government alone.¹ They do not apply to the acts of the legislatures of the several states,² though the article applies to offenses committed within the limits of a state.³ There is no conflict between this amendment and article III, section 2,

¹ *Barron v. Baltimore*, 7 Pet. 243, 8 L. ed. 672; *Fox v. Ohio*, 5 How. 410, 12 L. ed. 213; *Eilenbecker v. Plymouth County*, 134 U. S. 35, 10 S. Ct. 424, 33 L. ed. 801; *Davis v. Texas*, 139 U. S. 653, 11 S. Ct. 675, 35 L. ed. 300.

² *Twitchell v. Commonwealth*, 7 Wall. 321, 19 L. ed. 223; *Murphy v. People*, 2 Cow. 815; *Jackson v. Wood*, 2 Cow. 819; *Campbell v. State*, 11 Ga. 353; *Guillote v. New Orleans*, 12 La. Ann. 432; *Ex parte Smith*, 10 Wend. 449; *Walker v. Sauvinet*, 92 U. S. 90, 23 L. ed. 678.

³ *United States v. Dawson*, 15 How. 467, 14 L. ed. 775.

clause 3; the latter provides for jury trials according to settled common-law rules, and the former declares what those rules are.⁴ And while article III designates the place of trial for offenses against United States laws generally, this amendment applies only to crimes committed within a state.⁵

A crime committed against the laws of the United States outside the limits of a state is not local, and may be tried at such place as Congress shall designate by law.⁶ "To be informed of the nature and cause of the accusation" means that the offense must be set out with clearness and all necessary certainty, to apprise the accused of the crime of which he stands charged,⁷ and this requirement applies as well to criminal proceedings for arrest as to the indictment itself.⁸

Speedy Trial.

The right to a speedy trial means a right to trial at the earliest opportunity, having regard to time for the prosecution to prepare, with reasonable diligence, for the trial, and greater delay is not allowable.⁹ It is the duty of the prosecution to diligently prosecute the case against the accused,¹⁰ without vexatious, capricious and oppressive delays.¹¹ The provision does not mean that in all possible circumstances a person shall have a speedy and public trial; there may be times when the civil administration will be suspended by force of uncontrollable circumstances.¹² Nor is the accused entitled to his

⁴ *Callan v. Wilson*, 127 U. S. 549, 8 S. Ct. 1301, 32 L. ed. 223.

⁵ *United States v. Dawson*, 15 How. 487, 14 L. ed. 775; *Nashville etc. Ry. Co. v. Alabama*, 128 U. S. 101, 9 S. Ct. 28, 32 L. ed. 352.

⁶ *United States v. Dawson*, 15 How. 487, 14 L. ed. 775. And see *Anderson v. Dunn*, 6 Wheat. 215, 5 L. ed. 242.

⁷ *United States v. Noelke*, 17 Blatchf. 554, 1 Fed. 426; *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588.

⁸ *In re Coleman*, 15 Blatchf. 415, Fed. Cas. No. 2980.

⁹ *United States v. Fox*, 3 Mont. 512.

¹⁰ *In re Begerow*, 133 Cal. 349, 85 Am. St. Rep. 178, 65 Pac. 828, 56 L. R. A. 513.

¹¹ *Nixon v. State*, 2 Smedes & M. 497, 41 Am. Dec. 601.

¹² *Ex parte Turman*, 26 Tex. 708, 84 Am. Dec. 598.

discharge by reason of delay made necessary by the law itself;¹³ as where the court is engaged in the trial of another cause,¹⁴ or where the term expired before trial could be had.¹⁵ The provision is for the speedy trial of one already accused and not for investigations by a grand jury.¹⁶

Jury Trial.*

The "jury" referred to is a jury constituted, as it was at common law, of twelve men, neither more nor less.¹⁷ This requirement applies to prosecutions in the federal courts alone;¹⁸ it does not guarantee trials by jury in the state courts,¹⁹ and so does not preclude a trial without a jury in a state court,²⁰ or a trial with a jury of less than twelve men.²¹ The amendment secured to the people of the territories the right to a trial by jury,²² and it is applicable also to the District of Columbia.²³

The provision relates not only to felonies, but also to misdemeanors where the punishment involves deprivation of liberty.²⁴

¹³ *Clark v. Commonwealth*, 29 Pa. St. 129; *Ex parte State*, 76 Ala. 482.

¹⁴ *People v. Benc*, 130 Cal. 159, 62 Pac. 404.

¹⁵ *Erwin v. State*, 29 Ohio St. 186, 23 Am. Rep. 733; *Ex parte Lowrie*, 4 Utah, 177, 7 Pac. 493.

¹⁶ *Counselman v. Hitchcock*, 142 U. S. 563, 12 S. Ct. 195, 35 L. ed. 1110.

¹⁷ *Thompson v. Utah*, 170 U. S. 349, 18 S. Ct. 620, 42 L. ed. 1061; *Maxwell v. Dow*, 176 U. S. 586, 20 S. Ct. 448, 44 L. ed. 597.

¹⁸ *In re Sawyer*, 124 U. S. 200, 8 S. Ct. 482, 31 L. ed. 402; *Eilenbecker v. Plymouth County*, 134 U. S. 35, 10 S. Ct. 424, 33 L. ed. 801; *Williams v. Hert*, 110 Fed. 166.

¹⁹ *Brooks v. Missouri*, 124 U. S. 397, 8 S. Ct. 443, 31 L. ed. 454.

²⁰ *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 394, 16 S. Ct. 344, 40 L. ed. 467.

²¹ *Maxwell v. Dow*, 176 U. S. 587, 20 S. Ct. 448, 44 L. ed. 597.

²² *Callan v. Wilson*, 127 U. S. 550, 8 S. Ct. 1301, 32 L. ed. 223; *Reynolds v. United States*, 98 U. S. 154, 25 L. ed. 244.

²³ *Capitol Traction Co. v. Hof*, 174 U. S. 5, 19 S. Ct. 580, 43 L. ed. 873.

²⁴ *Callan v. Wilson*, 127 U. S. 549, 8 S. Ct. 131, 32 L. ed. 223.

*See, also, ante, p. 551.

Witnesses, and Assistance of Counsel.

Facts provable only by witnesses can be given in evidence only by witnesses who confront the accused and whom he may examine.²⁵ The admission of dying declarations constitute an exception to this rule.²⁶ The constitution gives this privilege to the accused, but where the burden has been cast on him of showing that he has not kept the witness away, and he fails, the witness' testimony at a former trial for the same offense is admissible;²⁷ but where the accused is in no way responsible for the absence of a witness a statement signed by such witness is not admissible against him.²⁸ It has been declared by a state court that the provisions of a similar clause are satisfied if the accused has once been confronted with and had an opportunity to cross-examine a witness,²⁹ and this would seem to be the ground upon which it has been held that the testimony of a witness who has removed from the jurisdiction may be read at a second trial.³⁰ The verified testimony of a witness who has died since the first trial may be read in evidence at the second trial.³¹

Where a defendant admits that a witness, if produced against him, would testify to certain facts, he thereby waives this right.³² As respects the requirement that the accused be present at his trial, the trial commences at least at the time when the impaneling of the jury begins,³³ and it has been held that

²⁵ Kirby v. United States, 174 U. S. 55, 19 S. Ct. 574, 43 L. ed. 890; United States v. Angell, 11 Fed. 34; People v. Lee Fat, 54 Cal. 531.

²⁶ Kirby v. United States, 174 U. S. 61, 19 S. Ct. 574, 43 L. ed. 890; Green v. State, 66 Ala. 40.

²⁷ Reynolds v. United States, 98 U. S. 160, 25 L. ed. 244.

²⁸ Motes v. United States, 178 U. S. 458, 20 S. Ct. 993, 44 L. ed. 1150.

²⁹ People v. Penhallow, 42 Hun, 103.

³⁰ Lowe v. State, 86 Ala. 53, 5 South. 438.

³¹ Mattox v. United States, 156 U. S. 242, 15 S. Ct. 339, 36 L. ed. 917; Brown v. Commonwealth, 73 Pa. St. 321, 13 Am. Rep. 740; State v. O'Brien, 24 Mo. 402, 69 Am. Dec. 435. But see Cline v. State, 36 Tex. Cr. 320, 61 Am. St. Rep. 850, 36 S. W. 1099.

³² United States v. Sacramento, 2 Mont. 239, 25 Am. Rep. 742.

³³ Hopt v. Utah, 110 U. S. 578, 4 S. Ct. 202, 28 L. ed. 262.

after indictment found, nothing can be done in the absence of the prisoner.³⁴ In cases of felony it is not in the power of the prisoner in person, or by counsel, to waive the right to be personally present.³⁵

The last clause of this amendment expressly abrogates the rule by which a prisoner might be denied appearance by counsel.³⁶

The guaranties of this article were not ipso facto extended to the Hawaiian Islands by the assumption of sovereignty of those islands by the United States.³⁷

³⁴ *Lewis v. United States*, 146 U. S. 372, 13 S. Ct. 136, 36 L. ed. 1011.

³⁵ *Lewis v. United States*, 146 U. S. 372, 13 S. Ct. 136, 36 L. ed. 1011; *Territory v. Day*, 2 Okla. 411, 37 Pac. 806.

³⁶ *Johnson v. Lewis*, 2 Mont. 159.

³⁷ *Territory of Hawaii v. Mankichi*, 190 U. S. 197, 23 S. Ct. 787, 47 L. ed. 1016.

ARTICLE VII.

RIGHT OF TRIAL BY JURY IN CIVIL ACTIONS.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

Trial by Jury in Civil Cases.

The guaranty of jury trials in suits at common law, contained in this amendment, applies only to trials in the United States courts and not to trials in the state courts.¹ The states are left free to regulate trials in their own courts.² The restriction is general and applies to all departments of government alike;³ to the legislative and judiciary of the territories,⁴ and to the governor as much as any other department.⁵ It applies

¹ *Livingston v. Moore*, 7 Pet. 469, 8 L. ed. 751; *Fox v. Ohio*, 5 How. 534, 12 L. ed. 213; *Justices v. Murray*, 9 Wall. 274, 19 L. ed. 658; *Edwards v. Elliott*, 21 Wall. 557, 22 L. ed. 487; *Walker v. Sauvinet*, 92 U. S. 92, 23 L. ed. 678; *Pearson v. Yewdall*, 95 U. S. 296, 24 L. ed. 436; *Boring v. Williams*, 27 Ala. 14; *Dawson v. Shaver*, 1 Blackf. 204; *Colt v. Eves*, 12 Conn. 243; *Foster v. Jackson*, 57 Ga. 206; *Railroad Co. v. Heath*, 9 Ind. 558; *State v. Keyes*, 8 Vt. 57, 30 Am. Dec. 450; *Huntington v. Bishop*, 5 Vt. 186; *Livingston v. Mayor*, 8 Wend. 85, 22 Am. Dec. 622; *Lee v. Tillotson*, 24 Wend. 337, 35 Am. Dec. 624; *Huston v. Wadsworth*, 5 Colo. 213.

² *Pearson v. Yewdall*, 95 U. S. 294, 24 L. ed. 436; *Jones v. People*, 2 Colo. 509; *Venine v. Archibald*, 3 Colo. 163.

³ *Kleinschmidt v. Dunphy*, 1 Mont. 118.

⁴ *Webster v. Reid*, 11 How. 437, 13 L. ed. 761; *American Pub. Co. v. Fisher*, 166 U. S. 467, 17 S. Ct. 619, 41 L. ed. 1079; *Whallon v. Bancroft*, 4 Minn. 109.

⁵ *Claim of Reside*, 9 Opin. Atty. Gen. 200.

also to the courts of the District of Columbia,⁶ and to tribunals established under a provisional government.⁷ The constitution does not, by this amendment, confer the right of trial by jury; it simply preserves it inviolate where it existed already.⁸

The wager of law, if it ever had a legal existence in the United States, is completely abolished.⁹

A litigant's right to unanimity of verdict in a territorial court cannot be taken away by the legislature.¹⁰

The phrase "common law" is used in contradistinction to equity, admiralty and maritime jurisdiction, and embraces all suits at common law, whatever may be their peculiar form, brought to settle legal rights.¹¹ Such suits are those in which legal rights alone are ascertained and determined.¹² Accordingly the provision does not embrace the established, exclusive or concurrent jurisdiction of equity courts,¹³ and while juries are used in courts of equity to "inform the conscience of the court,"¹⁴ and while a chancery court has the power to summon

⁶ *Capitol Traction Co. v. Hof*, 174 U. S. 5, 19 S. Ct. 580, 43 L. ed. 873; *Callan v. Wilson*, 127 U. S. 550, 8 S. Ct. 1301, 32 L. ed. 223.

⁷ *Scott v. Bilgerry*, 40 Miss. 119.

⁸ *McBride v. Stradley*, 103 Ind. 465; *Seeley v. Bridgeport*, 53 Conn. 1.

⁹ *Childress v. Emory*, 8 Wheat. 675, 5 L. ed. 705; *Thompson v. French*, 10 Yerg. 456.

¹⁰ *Walker v. New Mexico R. R. Co.*, 165 U. S. 595, 17 S. Ct. 421, 41 L. ed. 837; *American Pub. Co. v. Fisher*, 166 U. S. 467, 17 S. Ct. 619, 41 L. ed. 1079; *Springville v. Thomas*, 166 U. S. 708, 17 S. Ct. 717, 41 L. ed. 1172; *Thompson v. Utah*, 170 U. S. 346, 18 S. Ct. 620, 42 L. ed. 1061.

¹¹ *Parsons v. Bedford*, 3 Pet. 483, 7 L. ed. 732; *Insurance Co. v. Comstock*, 16 Wall. 358, 21 L. ed. 493; *United States v. La Vengeance*, 3 Dall. 297, 1 L. ed. 610; *Webster v. Reid*, 11 How. 437, 13 L. ed. 761; *Baines v. The James and Catherine*, Baldw. 544.

¹² *Irvine v. Marshall*, 20 How. 565, 15 L. ed. 994; *Keith v. Rockingham*, 18 Blatchf. 246, 2 Fed. 834; *The B. F. Woolsey*, 18 Blatchf. 344, 3 Fed. 457.

¹³ *Shields v. Thomas*, 18 How. 262, 15 L. ed. 368; *Home Ins. Co. v. Virginia-Carolina etc. Co.*, 109 Fed. 681.

¹⁴ *Parsons v. Bedford*, 3 Pet. 446, 7 L. ed. 732; *Wilson v. Biddle*, 123 U. S. 608, 8 S. Ct. 255, 31 L. ed. 280.

a jury, yet that power cannot be regarded as the equivalent of the right to a jury which a party may demand under this amendment;¹⁵ the right does not extend to purely equity suits.¹⁶ But, on the other hand, the right cannot be impaired in the federal courts by blending with a common-law claim a claim for equitable relief.¹⁷

Suits in admiralty are not contemplated by this clause, although they may be cases wherein the common-law courts possess a concurrent jurisdiction.¹⁸

The remission of a part of a verdict, followed by a judgment for the remainder, as a condition of the denial of a new trial, does not deprive the defendant of his constitutional right to have the question determined by a jury,¹⁹ nor does a rule of court authorizing judgment for the plaintiff in the absence of a sufficient affidavit of defense, in actions *ex contractu*, where the plaintiff has filed a supporting affidavit.²⁰ The direction of a verdict in a case where the court is convinced that a contrary verdict would be set aside,²¹ or the granting of a nonsuit for want of sufficient evidence, are likewise unobjectionable.²²

¹⁵ *Cates v. Allen*, 149 U. S. 459, 13 S. Ct. 883, 37 L. ed. 804.

¹⁶ *Shields v. Thomas*, 18 How. 353, 15 L. ed. 368; *Barton v. Barbour*, 104 U. S. 133, 26 L. ed. 673; *Woodworth v. Rogers*, 3 Wood. & M. 135, Fed. Cas. No. 18,018; *Ely v. M. & B. Mfg. Co.*, 4 Fish. Pat. Cas. 64, Fed. Cas. No. 4431; *Motes v. Bennett*, 2 Fish. Pat. Cas. 642, Fed. Cas. No. 9884.

¹⁷ *Scott v. Neely*, 140 U. S. 109, 11 S. Ct. 712, 35 L. ed. 358.

¹⁸ *Waring v. Clarke*, 5 How. 441, 12 L. ed. 226; *The Huntress*, 2 Ware (Dav.), 89, Fed. Cas. No. 6914; *United States v. Bright*, Bright. N. P. 19, Fed. Cas. No. 14,647; *Baines v. The James & Catherine*, Baldw. 544, Fed. Cas. No. 756; *United States v. La Vengeance*, 3 Dall. 297, 1 L. ed. 610; *The Margaret*, 9 Wheat. 421, 6 L. ed. 125; *The Betsey*, 4 Cr. 443, 2 L. ed. 673; *Whelan v. United States*, 7 Cr. 112, 3 L. ed. 286; *United States v. The Queen*, 4 Ben. 237, Fed. Cas. No. 16,107.

¹⁹ *Arkansas Valley etc. Co. v. Mann*, 130 U. S. 69, 9 S. Ct. 459, 32 L. ed. 854.

²⁰ *Fidelity & Deposit Co. v. United States*, 187 U. S. 315, 23 S. Ct. 120, 47 L. ed. 194.

²¹ *Treat Mfg. Co. v. Standard Steel etc. Co.*, 157 U. S. 675, 15 S. Ct. 718, 39 L. ed. 853.

²² *Coughran v. Bigelow*, 164 U. S. 308, 17 S. Ct. 117, 41 L. ed. 442.

— Cases Impliedly Excepted.

The guaranty does not apply to suits against the government,²³ nor to a proceeding under statutory provisions and forms specially provided.²⁴ It does not embrace motions for summary relief,²⁵ as that judgment may be entered against a party on an appeal bond,²⁶ or for a judgment by default for failure to produce books and papers,²⁷ or for a judgment on a forfeited recognizance.²⁸ Nor does it extend to preliminary inquiries which do not involve a trial of the merits;²⁹ nor to cases where the facts are conceded;³⁰ nor to a proceeding to annul the license of a pilot;³¹ nor to a proceeding to strike an attorney's name from the roll of practitioners;³² nor where there is a default in proceedings under the confiscation laws, involving a seizure on land.³³

In an information in rem, however, the claimant is entitled to a trial by jury,³⁴ and a trial by referees without the consent of the parties is not allowable.³⁵ In proceedings to assess the compensation for property condemned a jury trial is not required by this provision.³⁶ A statute appointing commis-

²³ *McElrath v. United States*, 102 U. S. 426, 26 L. ed. 189; *McElrath's Motion*, 12 Ct. of Cl. 812.

²⁴ *Ableman v. Booth*, 21 How. 506, 16 L. ed. 169; *Miller v. McQuerry*, 5 McLean, 469, Fed. Cas. No. 9583; *Ex parte Martin*, 2 Paine, 348, Fed. Cas. No. 9154.

²⁵ *Banning v. Taylor*, 24 Pa. St. 289.

²⁶ *Hiriat v. Ballou*, 9 Pet. 167, 9 L. ed. 85.

²⁷ *United States v. Distillery*, 6 Biss. 483, Fed. Cas. No. 14,966.

²⁸ *People v. Quigg*, 59 N. Y. 83.

²⁹ *Ex parte Martin*, 2 Paine, 348, Fed. Cas. No. 9154.

³⁰ *United States v. Anthony*, 11 Blatchf. 210, Fed. Cas. No. 14,459.

³¹ *Low v. Commissioners*, R. M. Charl. 302.

³² *Ex parte Wall*, 107 U. S. 288, 2 S. Ct. 569, 27 L. ed. 552.

³³ *Miller v. United States*, 11 Wall. 268, 20 L. ed. 135.

³⁴ *United States v. Barrels*, 1 Bond, 587, Fed. Cas. No. 15,933; *United States v. Distillery*, 6 Biss. 483, Fed. Cas. No. 14,966; *United States v. Packages*, Gilp. 235, Fed. Cas. No. 15,151.

³⁵ *United States v. Rathbone*, 2 Paine, 578, Fed. Cas. No. 16,121.

³⁶ *United States v. Jones*, 109 U. S. 519, 3 S. Ct. 346, 27 L. ed. 1015; *Bauman v. Ross*, 167 U. S. 593, 17 S. Ct. 966, 42 L. ed. 270; *Bonaparte v. Camden etc. R. R. Co.*, Baldw. 205, Fed. Cas. No. 1617.

sioners to determine titles, and making their decisions final, does not contravene this amendment;³⁷ but the state legislature cannot direct the federal courts to appoint commissioners on questions which should be submitted to a jury.³⁸

Re-examination of Facts.

The second clause of this amendment is substantial and independent and applies to all cases which have been tried by a jury in the state courts.³⁹ The only mode of review is on a motion for a new trial.⁴⁰ A federal court will refuse to re-examine findings of facts erroneously made by a jury in condemnation proceedings in a state court.⁴¹ Since this amendment Congress cannot confer authority to grant new trials in cases tried by juries except to redress errors of law,⁴² and an act of Congress providing for the retrial of the facts in certain removed cases is void.⁴³ The removal of a cause after trial and verdict in a state court should be denied.⁴⁴ A judgment recovered in a state court against a receiver appointed by a federal court is conclusive of the amount of the claim.⁴⁵ No review of the rulings of the court can be had under Revised Statutes, section 649, unless the record shows that a written stipulation waiving a jury was filed with the clerk.⁴⁶

³⁷ *Barker v. Jackson*, 1 Paine, 559, Fed. Cas. No. 989.

³⁸ *Green v. Biddle*, 8 Wheat. 1, 5 L. ed. 547; *Bank of Hamilton v. Dudley*, 2 Pet. 492, 7 L. ed. 496.

³⁹ *Justices v. Murray*, 9 Wall. 277, 19 L. ed. 658.

⁴⁰ *Parsons v. Bedford*, 3 Pet. 433, 7 L. ed. 732; *United States v. Wonson*, 1 Gall. 20, Fed. Cas. No. 15,750; *Patrie v. Murray*, 43 Barb. 323, 29 How. Pr. 312; *Wetherbee v. Johnson*, 14 Mass. 412.

⁴¹ *Chicago etc. Ry. Co. v. Chicago*, 166 U. S. 243, 17 S. Ct. 587, 41 L. ed. 979.

⁴² *Parsons v. Bedford*, 3 Pet. 433, 7 L. ed. 732; *Bank of Hamilton v. Dudley*, 2 Pet. 492, 7 L. ed. 496.

⁴³ *Justices v. Murray*, 9 Wall. 277, 19 L. ed. 658.

⁴⁴ *McKee v. Rains*, 10 Wall. 25, 19 L. ed. 860; *Stevenson v. Williams*, 19 Wall. 576, 22 L. ed. 162; *Bryant v. Rich*, 106 Mass. 193, 8 Am. Rep. 316. See, also, *Spencer v. Lapsley*, 20 How. 264, 15 L. ed. 902.

⁴⁵ *Dillingham v. Hawk*, 60 Fed. 497.

⁴⁶ *Kearney v. Case*, 12 Wall. 275, 20 L. ed. 395.

Waiver of Jury.

The Seventh Amendment has no application in a case where the parties have waived a jury trial.⁴⁷ But trial by jury is a fundamental guaranty of the rights and liberties of the people, and every reasonable presumption should be indulged against its waiver.⁴⁸ This does not mean, however, that waiver may not be presumed in any case from the conduct of the parties,⁴⁹ and where a party is present by counsel and goes to trial without objection he thereby waives his right to a jury;⁵⁰ but in all such cases the facts amounting to waiver must clearly appear.⁵¹ The parties may, by stipulation, waive a jury and submit the issues of fact to the court.⁵² The right may be waived by stipulation in open court.⁵³ The provisions of the act of 1865, permitting trials of fact by the court, must be strictly followed, and a party desiring to waive a jury and save their rights must file a written stipulation.⁵⁴ A waiver sufficiently appears if the record recites that the cause was called for trial by the court, "the jury having been waived in writing";⁵⁵ but a statement to the effect that "a jury having been impaneled and sworn and the introduction of evidence having been commenced, by stipulation of the parties duly entered, the jury withdrawn, trial to the jury waived," etc., is insufficient.⁵⁶

⁴⁷ *Parsons v. Armor*, 3 Pet. 425, 7 L. ed. 724.

⁴⁸ *Hodges v. Easton*, 106 U. S. 411, 1 S. Ct. 307, 27 L. ed. 169.

⁴⁹ *Bank of Columbia v. Okely*, 4 Wheat. 243, 4 L. ed. 559; *Flint etc. Co. v. Foster*, 5 Ga. 213, 48 Am. Dec. 265.

⁵⁰ *Kearney v. Case*, 12 Wall. 284, 20 L. ed. 395.

⁵¹ *United States v. Rathbone*, 2 Paine, 579, Fed. Cas. No. 16,121.

⁵² *United States v. Distilled Spirits*, 14 Wall. 44, 20 L. ed. 815; *Bamberger v. Terry*, 103 U. S. 40, 26 L. ed. 317; *Supervisors v. Kennicott*, 103 U. S. 554, 26 L. ed. 486; *United States v. Rathbone*, 2 Paine, 578.

⁵³ *Moncure v. Zunts*, 11 Wall. 416, 20 L. ed. 181; *Kearney v. Case*, 12 Wall. 275, 20 L. ed. 395; *Bamberger v. Terry*, 103 U. S. 43, 26 L. ed. 317; *Richmond v. Smith*, 15 Wall. 429, 21 L. ed. 200.

⁵⁴ *Flanders v. Tweed*, 9 Wall. 429-431, 19 L. ed. 678; *Bond v. Dustin*, 112 U. S. 607, 5 S. Ct. 297, 28 L. ed. 835; *Rush v. Newman*, 58 Fed. 160; *Duncan v. Atchison etc. R. R. Co.*, 72 Fed. 811.

⁵⁵ *Fleitas v. Cockrem*, 101 U. S. 301, 25 L. ed. 954.

⁵⁶ *Cudahy Packing Co. v. Sioux Nat. Bank*, 69 Fed. 782.

Without waiver of a jury, it is error for the court to substitute itself for the jury and find the facts involved and render judgment thereon,⁵⁷ but such error cannot be taken advantage of collaterally.⁵⁸

⁵⁷ *Baylis v. Travelers' Ins. Co.*, 118 U. S. 316, 5 S. Ct. 494, 28 L. ed. 989; *Sulzer v. Watson*, 39 Fed. 415; *Thomas v. American Land Co.*, 47 Fed. 559.

⁵⁸ *Maxwell v. Stewart*, 21 Wall. 73, 22 L. ed. 564, 22 Wall. 79, 22 L. ed. 564. And see *Humphries v. District of Columbia*, 174 U. S. 195, 19 S. Ct. 639, 43 L. ed. 944.

ARTICLE VIII.

BAIL—FINES—PUNISHMENTS.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment, proposed 25th September, 1789; ratified 15th December, 1791.

The federal laws are framed on the theory that a person accused of crime may be admitted to bail until adjudged guilty in a court of last resort,¹ but a state court has declared that under a state constitutional provision the right to bail is not operative after trial and conviction.²

Habeas corpus will not lie to revise a sentence on the ground that the fine or imprisonment prescribed was excessive.³ Where an imprisonment or judgment exceeds the authority of the court the prisoner cannot be released on habeas corpus until he has served or performed as much of the sentence or judgment as the court could impose.⁴ A statute providing for a heavier sentence for a second offense does not impose a cruel and unusual punishment.⁵ Punishment for crime by whipping is not a cruel and unusual punishment.⁶

The prohibitions of this amendment apply to the federal government and not to the states.⁷

¹ *Hudson v. Parker*, 156 U. S. 285, 15 S. Ct. 450, 39 L. ed. 424.

² *Ex parte Schwartz*, 2 Tex. App. 74.

³ *Ex parte Watkins*, 3 Pet. 203, 7 L. ed. 650; *Ex parte Wilson*, 114 U. S. 588, 11 S. Ct. 870, 29 L. ed. 89.

⁴ *In re Swann*, 150 U. S. 653, 14 S. Ct. 225, 37 L. ed. 1207.

⁵ *McDonald v. Massachusetts*, 180 U. S. 313, 21 S. Ct. 389, 45 L. ed. 542.

⁶ *Garcia v. Territory*, 1 N. Mex. 415.

⁷ *Barron v. Mayor of Baltimore*, 7 Pet. 243, 8 L. ed. 672; *Pervear v. Commonwealth*, 5 Wall. 480, 18 L. ed. 608; *McElvaine v. Brush*, 142 U. S. 159, 12 S. Ct. 156, 35 L. ed. 971; *James v. Commonwealth*, 12 Serg. & R. 220; *Barker v. People*, 3 Cow. 686, 15 Am. Dec. 322; *Foot v. State*, 59 Md. 264.

ARTICLE IX.

RIGHTS OF PEOPLE NOT DISPARAGED BY CONSTITUTION.*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment, proposed 25th September, 1769; ratified 15th December, 1791.

The Ninth Amendment restrains only the powers of the general government.¹

¹ *Livingston v. Moore*, 7 Pet. 551, 552, 8 L. ed. 751; *Holmes v. Jennison*, 14 Pet. 558, 10 L. ed. 579; *Green v. Holway*, 101 Mass. 250, 3 Am. Rep. 344.

* See, also, note to amendment X.

ARTICLE X.

POWERS RESERVED TO THE STATES OR TO THE PEOPLE.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment proposed 25th September, 1789; ratified 15th December, 1791.

Sovereignty.

By the Revolution the duties and powers of government devolved upon the people,¹ and the Declaration of Independence, which changed the character of the Revolutionary War from a civil to a public war, was of the independence of each state and not the states collectively.² The sovereign prerogatives of the crown devolved upon the states,³ and the sovereignty thus acquired became vested in the people of the states.⁴

The people are the source of all governmental authority,⁵ and whatever powers the states possessed before the adoption of the constitution remain the same except so far as they may, by the action of the people themselves, be abridged by that instrument.⁶ In their desire to "form a more perfect union,"

¹ Trustees Dartmouth College v. Woodward, 4 Wheat. 651, 4 L. ed. 629; Rhode Island v. Massachusetts, 12 Pet. 751, 9 L. ed. 1233; Bonaparte v. Camden etc. R. R. Co., 1 Baldw. 220, Fed. Cas. No. 1617; Wheeler v. Smith, 9 How. 78, 13 L. ed. 44.

² Ware v. Hylton, 3 Dall. 224, 225, 1 L. ed. 568; McIlvaine v. Cox's Lessee, 2 Cr. 280, 2 L. ed. 279, 4 Cr. 212, 2 L. ed. 598.

³ Fountain v. Ravenel, 17 How. 384, 15 L. ed. 80.

⁴ Luther v. Borden, 7 How. 47, 12 L. ed. 581.

⁵ Barnes v. District of Columbia, 91 U. S. 546, 23 L. ed. 440.

⁶ Calder v. Bull, 3 Dall. 387, 1 L. ed. 648; Gibbons v. Ogden, 9 Wheat. 202, 6 L. ed. 23; Barron v. Mayor of Baltimore, 7 Pet. 243, 8 L. ed. 672, Texas v. White, 7 Wall. 725, 19 L. ed. 227; Collector v. Day, 11 Wall. 124, 20 L. ed. 122; McPherson v. Blacker, 146 U. S. 25, 13 S. Ct. 3, 36 L. ed. 869.

the people conferred certain powers upon the general government they created; but it was not the people of America, but the people of the several states, from whom those powers proceeded.⁷

The state governments are governments of reserved powers, and the United States government is one of delegated powers.⁸ The several articles of the constitution recognize the necessary existence, and, within their proper sphere, the independent authority of the states, and this amendment expressly reserves to them all the powers they have not delegated to the national government.⁹ The United States government is one of enumerated powers; while supreme within its own sphere, it is a government of limited jurisdiction and specific functions, possessing no other powers but such as are given to it expressly or by necessary intendment by the constitution.¹⁰

The word "delegated" is not, however, qualified by the word "expressly"; such qualification was moved and rejected.¹¹ No

⁷ *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. ed. 529.

⁸ *Houston v. Moore*, 5 Wheat. 74, 5 L. ed. 19; *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Gibbons v. Ogden*, 9 Wheat. 202, 6 L. ed. 23; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97; *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678; *Weston v. Charleston*, 2 Pet. 449, 7 L. ed. 481; *Briscoe v. Bank of Kentucky*, 11 Pet. 317, 9 L. ed. 709; *Dobbins v. Commissioners*, 16 Pet. 435, 10 L. ed. 1022; *Hepburn v. Griswold*, 8 Wall. 611, 19 L. ed. 513; *Collector v. Day*, 11 Wall. 113, 20 L. ed. 122; *National Bank v. Commonwealth*, 9 Wall. 353, 19 L. ed. 701; *Inman S. S. Co. v. Tinker*, 94 U. S. 238, 24 L. ed. 118; *United States v. Cruikshank*, 92 U. S. 550, 23 L. ed. 588.

⁹ *Lane County v. Oregon*, 7 Wall. 76, 19 L. ed. 101.

¹⁰ *Pacific Ins. Co. v. Soule*, 7 Wall. 444, 19 L. ed. 95; *Martin v. Hunter*, 1 Wheat. 326, 4 L. ed. 97; *McCulloch v. Maryland*, 4 Wheat. 406, 4 L. ed. 579; *Hepburn v. Griswold*, 8 Wall. 611, 19 L. ed. 513; *Collector v. Day*, 11 Wall. 124, 20 L. ed. 122; *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290; *Gilman v. Philadelphia*, 3 Wall. 725, 18 L. ed. 96; *United States v. Illinois etc. R. R. Co.*, 154 U. S. 239, 14 S. Ct. 1015, 38 L. ed. 971.

¹¹ *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Martin v. Hunter*, 1 Wheat. 304, 4 L. ed. 97; *Houston v. Moore*, 5 Wheat. 1, 5 L. ed. 19; *Anderson v. Dunn*, 6 Wheat. 226, 5 L. ed. 242; *United States v. Bailey*, 1 McLean, 234, Fed. Cas. No. 14,495.

power should be conceded to the general government which cannot be legitimately found in the constitution, but, on the other hand, none should be withheld which has been declared necessary to the execution of expressly granted powers and to the fulfillment of clear and well-defined duties.¹² Many powers are necessarily implied under the express grants of power in the constitution. "It would be utopian to suppose that government can exist without leaving the exercise of discretion somewhere."¹³ But every valid act of Congress must find in the constitution some warrant for its passage.¹⁴ It is not only the right, but the duty, of the courts to determine whether the means employed by Congress have any relation to the powers granted by the constitution, and to declare acts of Congress void when they are repugnant to the constitution;¹⁵ the judiciary cannot, by enforcing an unconstitutional law as a law, supply a want of power in the legislature.¹⁶

The constitutional limitations upon state power are founded upon the desire to protect life and property from the sudden and strong passions to which men are exposed, and the constitution contains what may be deemed a bill of rights for the people of the states.¹⁷ The framers of the constitution did not intend to restrain the states in the regulation of their civil institutions adopted for internal government.¹⁸ The police power of the states is inherent and exclusive, and neither surrendered to the general government nor restrained by the constitution.¹⁹ The inhibitions of the federal constitution are not

¹² *United States v. Marigold*, 9 How. 568, 13 L. ed. 257.

¹³ *Anderson v. Dunn*, 6 Wheat. 225, 5 L. ed. 242.

¹⁴ *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290; *Collector v. Day*, 11 Wall. 124, 20 L. ed. 122.

¹⁵ *Marbury v. Madison*, 1 Cr. 176-180, 2 L. ed. 60; *Cherokee Nation v. Kansas Ry.*, 135 U. S. 657, 10 S. Ct. 965, 34 L. ed. 295; *Dewey v. United States*, 178 U. S. 521, 20 S. Ct. 981, 44 L. ed. 1170.

¹⁶ *O'Brien v. Wheelock*, 184 U. S. 489, 22 S. Ct. 354, 46 L. ed. 636.

¹⁷ *Fletcher v. Peck*, 6 Cr. 133, 3 L. ed. 162.

¹⁸ *Trustees Dartmouth College v. Woodward*, 4 Wheat. 629, 4 L. ed. 629.

¹⁹ *New York v. Miln*, 11 Pet. 139, 9 L. ed. 648; *Slaughter-house Cases*, 16 Wall. 63, 21 L. ed. 394; *Kidd v. Pearson*, 128 U. S. 26, 9

violated by legitimate laws to secure public safety, health and morals,²⁰ and the federal courts cannot interfere with the purported exercise of such a power until rights secured by the federal laws or constitution are infringed.²¹ Except where the federal constitution restricts, the only security against unwise and unjust legislation is in the wisdom and justice of the representative body;²² in the virtue and intelligence of the people.²³

— Concurrent Powers.

The United States and the states exercise jurisdiction within the same territorial limits, and are separate and independent sovereignties, acting separately and independently within their respective spheres, "as if a line of division was traced by landmarks and monuments visible to the eye."²⁴ The constitution contemplates independent exercise, by nation and state, severally, of their constitutional powers,²⁵ but prohibitions on the states are not to be enlarged by construction,²⁶ and the mere grant of a power to Congress does not necessarily imply a pro-

S. Ct. 6, 32 L. ed. 346; *In re Rahrer*, 140 U. S. 554, 11 S. Ct. 865, 35 L. ed. 572; *United States v. E. C. Knight Co.*, 156 U. S. 11, 15 S. Ct. 249, 39 L. ed. 325.

²⁰ *New York etc. R. R. Co. v. Bristol*, 151 U. S. 567, 14 S. Ct. 437, 38 L. ed. 269.

²¹ *L'Hote v. New Orleans*, 177 U. S. 597, 20 S. Ct. 788, 44 L. ed. 899.

²² *Providence Bank v. Billings*, 4 Pet. 563, 7 L. ed. 939.

²³ *Gilman v. Philadelphia*, 3 Wall. 731, 18 L. ed. 96.

²⁴ *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579; *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. ed. 23; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Brown v. Maryland*, 12 Wheat. 410, 6 L. ed. 678; *Weston v. Charleston*, 2 Pet. 449, 7 L. ed. 481; *Dobbins v. Commissioners*, 16 Pet. 435, 10 L. ed. 1022; *Collector v. Day*, 11 Wall. 113, 20 L. ed. 122; *National Bank v. Commonwealth*, 9 Wall. 353, 19 L. ed. 701; *Pennoyer v. Neff*, 95 U. S. 722, 24 L. ed. 565; *Sweatt v. Boston etc. R. R. Co.*, 5 Bank. Reg. 248, Fed. Cas. No. 13,694; *Frasher v. State*, 3 Tex. App. 273; *Fifield v. Close*, 15 Mich. 505; *State v. Gorton*, 32 Ind. 1; *State v. Gibson*, 36 Ind. 389, 10 Am. Rep. 42; *People v. Brady*, 40 Cal. 198.

²⁵ *Pollock v. Farmers' L. etc. Co.*, 157 U. S. 583, 15 S. Ct. 673, 39 L. ed. 759.

²⁶ *Anderson v. Baker*, 23 Md. 531.

hibition on the states to exercise the power until Congress assumes to exercise it.²⁷ So the states may exercise a concurrent power with Congress, except where the power is lodged exclusively in the United States, or where from its nature it is necessary that Congress alone shall exercise it,²⁸ and although the subject of state regulation is one that Congress may absolutely control, yet the state's action must be respected until Congress intervenes.²⁹ When, however, a state statute invades the domain of legislation which belongs exclusively to Congress it is void,³⁰ and a state law passed in the exercise of powers reserved to the state is void when in conflict with an act of Congress passed in the regular exercise of granted powers.³¹ But in any case the repugnancy of the state act to the constitution or a federal law must be such that they cannot stand together, in order to invalidate the state act.³²

A power which is forbidden to the states is not necessarily in the federal government, but if that which is essential to government is forbidden to one, the prohibition is equivalent to a grant to the other.³³

Residuary Powers in General.

The residuary powers of legislation are in the states and extend to all persons and things within their territorial limits.³⁴

²⁷ *Sturges v. Crowninshield*, 4 Wheat. 193-196, 4 L. ed. 529; *New York v. Miln*, 11 Pet. 146, 9 L. ed. 648; *Southern S. S. Co. v. Port Wardens*, 6 Wall. 33, 16 L. ed. 749; *Osborne v. Mobile*, 16 Wall. 482, 21 L. ed. 470; *Missouri etc. Ry. Co. v. Haber*, 169 U. S. 637, 18 S. Ct. 488, 42 L. ed. 878.

²⁸ *Ogden v. Saunders*, 12 Wheat. 275, 6 L. ed. 606; *Gilman v. Philadelphia*, 3 Wall. 730, 18 L. ed. 96.

²⁹ *Missouri etc. Ry. v. Haber*, 169 U. S. 630-635, 18 S. Ct. 483, 42 L. ed. 878.

³⁰ *Henderson v. New York*, 92 U. S. 272, 23 L. ed. 543.

³¹ *Sinnot v. Davenport*, 22 How. 242, 16 L. ed. 243.

³² *Sinnot v. Davenport*, 22 How. 243, 16 L. ed. 243; *Missouri etc. Ry. Co. v. Haber*, 169 U. S. 623, 18 S. Ct. 488, 42 L. ed. 878.

³³ *Van Huse v. Kanouse*, 13 Mich. 303.

³⁴ *Holmes v. Jennison*, 14 Pet. 617, 10 L. ed. 579; *United States v. Bevens*, 3 Wheat. 367, 4 L. ed. 404; *Arndt v. Griggs*, 134 U. S. 323, 10 S. Ct. 557, 33 L. ed. 918.

The several states, for all purposes save those of a national character, are foreign and independent of each other,³⁵ and while they are members of the Union, whose constitution is supreme,³⁶ yet their legislatures have all the powers delegated to them by the state constitutions, which are not granted to Congress or expressly forbidden by the constitution of the United States.³⁷ Among these powers are those relating to internal police,³⁸ the power to regulate transfers of property within state limits,³⁹ and declare the effect and dignity of individual titles to land,⁴⁰ and to regulate the tenure of real property, the mode of acquisition, rule of descent, and extent of testamentary disposition,⁴¹ to regulate the privileges and immunities of their own citizens, provided they do not abridge the privileges or immunities belonging to citizens of the United States.⁴²

A state may determine the status, or domestic and social condition of the persons domiciled within its territory,⁴³ and the protection of citizens in their religious liberties is left to the state constitutions and laws.⁴⁴ The power to regulate suffrage

³⁵ *Buckner v. Finley*, 2 Pet. 586, 7 L. ed. 528; *Bank of United States v. Daniel*, 12 Pet. 33, 9 L. ed. 989; *Bank of Augusta v. Earle*, 13 Pet. 520, 10 L. ed. 274; *Dodge v. Woolsey*, 18 How. 550, 15 L. ed. 401; *Mahon v. Justice*, 127 U. S. 706, 8 S. Ct. 1204, 32 L. ed. 283.

³⁶ *Fletcher v. Peck*, 6 Cr. 136, 3 L. ed. 162.

³⁷ *Calder v. Bull*, 3 Dall. 386, 1 L. ed. 648; *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 356; *People v. Naglee*, 1 Cal. 231, 52 Am. Dec. 312.

³⁸ *Ante*, p. 437.

³⁹ *Texas v. White*, 7 Wall. 732, 19 L. ed. 227; *Harvey v. Rhode Island L. Works*, 93 U. S. 671, 23 L. ed. 1003; *Pennoyer v. Neff*, 95 U. S. 723, 24 L. ed. 565; *Arndt v. Griggs*, 134 U. S. 321, 10 S. Ct. 557, 33 L. ed. 918.

⁴⁰ *Clark v. Smith*, 13 Pet. 203, 10 L. ed. 123.

⁴¹ *United States v. Fox*, 94 U. S. 315, 24 L. ed. 192; *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 326; *Fraser v. State*, 3 Tex. App. 273.

⁴² *Presser v. Illinois*, 116 U. S. 266, 6 S. Ct. 580, 29 L. ed. 615.

⁴³ *Strader v. Graham*, 10 How. 82, 13 L. ed. 337; *Plessy v. Ferguson*, 163 U. S. 552, 16 S. Ct. 1138, 41 L. ed. 256; *Lemmon v. People*, 20 N. Y. 621; *Hunt v. Hunt*, 72 N. Y. 217, 28 Am. Rep. 136; *Woodward v. Woodward*, 87 Tenn. 648, 11 S. W. 893.

⁴⁴ *Permoli v. First Municipality*, 3 How. 589, 11 L. ed. 739.

belongs exclusively to the states, and Congress cannot interfere with the states in their exercise of it.⁴⁵

The power to direct and regulate the mode of selling goods within its territory belongs to a state, subject only to the restrictions embraced under grants of power to Congress.⁴⁶

The establishment of courts of justice, appointment of judges, and the regulation of the administration of justice within the states are left to the state legislatures.⁴⁷ So a state may regulate the forms of pleading in her own courts, in criminal as well as civil cases;⁴⁸ the entire matter of procedure and process in the state courts is within state control, subject only to the restriction that state regulations must not work a denial of fundamental rights or conflict with the state constitution.⁴⁹ There is nothing in the federal constitution that precludes the exercise of judicial functions by a state legislature.⁵⁰

Corporations depend for their powers upon the will of the legislatures of the states creating them.⁵¹ The recognition and regulation of foreign corporations is a matter solely for the legislatures of the states in which such corporations seek to do business.⁵² A state's power with regard to foreign corporations

⁴⁵ *United States v. Cruikshank*, 92 U. S. 556, 23 L. ed. 588; *Sproule v. Fredericks*, 69 Miss. 898, 11 South. 472; *Huber v. Reilly*, 53 Pa. St. 112.

⁴⁶ *Commonwealth v. Kimball*, 24 Pick. 359, 35 Am. Dec. 356.

⁴⁷ *Calder v. Bull*, 3 Dall. 387, 1 L. ed. 648; *Lapsley v. Brashears*, 4 Litt. 47.

⁴⁸ *Kentucky v. Dennison*, 24 How. 107, 16 L. ed. 717.

⁴⁹ *York v. Texas*, 137 U. S. 20, 11 S. Ct. 9, 34 L. ed. 604; *Brown v. New Jersey*, 175 U. S. 175, 20 S. Ct. 77, 44 L. ed. 119.

⁵⁰ *Calder v. Bull*, 3 Dall. 392, 1 L. ed. 648; *Satterlee v. Mathewson*, 2 Pet. 380, 7 L. ed. 458; *Merrill v. Sherburne*, 1 N. H. 209, 8 Am. Dec. 55; *Dash v. Van Kleeck*, 7 Johns. 499, 5 Am. Dec. 305; *Burch v. Newbury*, 10 N. Y. 390.

⁵¹ *Bank of Augusta v. Earle*, 13 Pet. 587, 10 L. ed. 274; *Railroad Co. v. Koontz*, 104 U. S. 11, 26 L. ed. 643; *Oregon Ry. etc. Co. v. Oregonian Ry. Co.*, 130 U. S. 20, 9 S. Ct. 409, 32 L. ed. 837; *United States v. Keokuk*, 6 Wall. 516, 18 L. ed. 933; *Fertilizing Co. v. Hyde Park*, 97 U. S. 667, 24 L. ed. 1036.

⁵² *Bank of Augusta v. Earle*, 13 Pet. 591, 10 L. ed. 274; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Doyle v. Continental Ins. Co.*,

is as broad as its power over domestic corporations,⁵³ subject only to the expressed restrictions of the federal constitution.⁵⁴

The taxing power of a state is coextensive with its sovereignty over persons and property within its territory;⁵⁵ it is as broad as its territorial limits and extends to everything therein except what are properly denominated the instruments or means of the federal government.⁵⁶

A state may bind itself by contract to the same extent as an individual, unless restrained by some constitutional inhibitions as to certain classes of contracts,⁵⁷ and may hold property as an individual.⁵⁸ Measures calculated to produce public benefits through the medium of corporations are within the reserved powers of the states.⁵⁹

Right to Secede not Reserved.

The right of secession is not reserved by this amendment, and

94 U. S. 543, 24 L. ed. 148; *St. Clair v. Cox*, 106 U. S. 356, 1 S. Ct. 354, 27 L. ed. 222; *Allgeyer v. Louisiana*, 165 U. S. 583, 17 S. Ct. 427, 41 L. ed. 832.

⁵³ *Orient Ins. Co. v. Daggs*, 172 U. S. 566, 19 S. Ct. 281, 43 L. ed. 552; *Dayton Coal Co. v. Barton*, 183 U. S. 24, 22 S. Ct. 5, 46 L. ed. 61; *New York Life Ins. Co. v. Cravens*, 178 U. S. 401, 20 S. Ct. 962, 44 L. ed. 1116.

⁵⁴ *Philadelphia etc. Assn. v. New York*, 119 U. S. 116, 7 S. Ct. 108, 30 L. ed. 342; *Barron v. Burnside*, 121 U. S. 200, 7 S. Ct. 931, 30 L. ed. 915.

⁵⁵ *Brown v. Maryland*, 12 Wheat. 448, 6 L. ed. 678; *Nevada Bank v. Sedgwick*, 104 U. S. 111, 26 L. ed. 703; *Hagar v. Reclamation Dist.*, 111 U. S. 709, 4 S. Ct. 663, 28 L. ed. 569; *Marye v. Baltimore etc. R. R. Co.*, 127 U. S. 123, 8 S. Ct. 1037, 32 L. ed. 94; *Dewey v. Des Moines*, 173 U. S. 204, 19 S. Ct. 739, 43 L. ed. 665.

⁵⁶ *Society for Savings v. Coite*, 6 Wall. 604, 18 L. ed. 897; *Ward v. Maryland*, 12 Wall. 426, 20 L. ed. 449.

⁵⁷ *Piqua Bank v. Knoop*, 16 How. 369, 14 L. ed. 977; *Ohio T. Co. v. Debolt*, 16 How. 416, 14 L. ed. 997; *Houston etc. R. R. Co. v. Texas*, 177 U. S. 97, 20 S. Ct. 545, 44 L. ed. 673.

⁵⁸ *Bank of United States v. Planters' Bank*, 9 Wheat. 907, 6 L. ed. 244; *Bank of Kentucky v. Wister*, 2 Pet. 323, 7 L. ed. 437; *Briscoe v. Bank of Kentucky*, 11 Pet. 325, 9 L. ed. 709; *Pennsylvania v. Wheeling etc. Bridge Co.*, 13 How. 560, 14 L. ed. 249.

⁵⁹ *Willson v. Blackbird Creek Marsh Co.*, 2 Pet. 245, 7 L. ed. 412; *Stockton etc. R. R. Co. v. Stockton*, 41 Cal. 189.

any statute or ordinance to that effect is a nullity.⁶⁰ The Union is perpetual and indissoluble,⁶¹ and a state continues to be a member thereof notwithstanding any ordinance of secession.⁶² A state can have no political existence outside of and independent of the constitution of the United States,⁶³ and an attempt to separate from the Union does not destroy its identity, nor free it from the binding force of that constitution,⁶⁴ nor release citizens from their obligation of loyalty to the general government.⁶⁵ The rights of a rebellious state are merely suspended, not destroyed,⁶⁶ and the legislature of a state attempting secession merely ceases to represent the state as a constitutional member of the federal Union.⁶⁷ The confederation of the southern states was in direct violation of the constitution,⁶⁸ and while the acts of the legislatures of those states necessary for the protection of persons and property were upheld,⁶⁹ yet the so-called Confederate government and the states composing that government were not *de facto* governments, in such a sense as to give legal efficacy to their acts.⁷⁰

⁶⁰ *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *White v. Hart*, 13 Wall. 651, 20 L. ed. 685; *White v. Cannon*, 6 Wall. 443, 18 L. ed. 923; *Williams v. Bruffy*, 96 U. S. 182, 24 L. ed. 716; *Texas v. White*, 7 Wall. 733, 19 L. ed. 227; *Mauran v. Alliance Ins. Co.*, 6 Wall. 13, 18 L. ed. 836.

⁶¹ *Texas v. White*, 7 Wall. 724, 19 L. ed. 227.

⁶² *White v. Hart*, 13 Wall. 646, 20 L. ed. 685; *Keith v. Clark*, 97 U. S. 461, 24 L. ed. 1071; *Sequestration Cases*, 30 Tex. 688, 98 Am. Dec. 494; *Chancely v. Bailey*, 37 Ga. 532, 95 Am. Dec. 350; *Pennywit v. Foote*, 27 Ohio St. 600, 22 Am. Rep. 340; *Hood v. Maxwell*, 1 W. Va. 219.

⁶³ *Penn v. Tollison*, 26 Ark. 545.

⁶⁴ *Keith v. Clark*, 97 U. S. 451, 24 L. ed. 1071.

⁶⁵ *United States v. Cathcart*, 1 Bond, 556, Fed. Cas. No. 14,756.

⁶⁶ *White v. Hart*, 13 Wall. 651, 20 L. ed. 685.

⁶⁷ *Taylor v. Thomas*, 22 Wall. 489, 22 L. ed. 789.

⁶⁸ *Florida v. Georgia*, 17 How. 478, 15 L. ed. 181.

⁶⁹ *Texas v. White*, 7 Wall. 733, 19 L. ed. 227; *Thomas v. Richmond*, 12 Wall. 857, 20 L. ed. 453; *Horn v. Lockhardt*, 17 Wall. 580, 21 L. ed. 657; *Sprott v. United States*, 20 Wall. 464, 22 L. ed. 371.

⁷⁰ *Hickman v. Jones*, 9 Wall. 200, 19 L. ed. 515; *Williams v. Bruffy*, 96 U. S. 182, 24 L. ed. 716; *Chisholm v. Coleman*, 43 Ala. 204.

ARTICLE XI.

LIMITATION ON JUDICIAL POWERS.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Amendment proposed 5th March, 1794; ratified 8th January, 1793.

Scope of Amendment.

Under the constitution as originally adopted a state was suable in the supreme court by an individual citizen of another state,¹ but since the adoption of the Eleventh Amendment no jurisdiction can be exercised in any case, past, present, or future, in which a state was or is sued by citizens of another state or by citizens or subjects of any foreign state;² the amendment superseded all pending suits besides precluding the institution of new suits.³ A constitutional amendment may control a provision authorizing the exercise of a power by declaring that it shall not give such power⁴ and the phraseology here employed—that the judicial power “shall not be construed to extend” to suits against a state—imports an absolute prohibition.⁵ At the same time, however, it only restrains the construction which might otherwise be given to the constitution, and if a case is not one of which the supreme court might take original jurisdiction, it is not within the prohibition.⁶ It ap-

¹ *Chisholm v. Georgia*, 2 Dall. 450, 1 L. ed. 440.

² *Hollingsworth v. Virginia*, 3 Dall. 382, 1 L. ed. 644; *Cohen v. Virginia*, 6 Wheat. 294, 5 L. ed. 257.

³ *Hans v. Louisiana*, 134 U. S. 11, 10 S. Ct. 506, 33 L. ed. 842.

⁴ *Johnson v. Tompkins*, 1 Baldw. 598, Fed. Cas. No. 7416.

⁵ *Cohen v. Virginia*, 6 Wheat. 405, 5 L. ed. 257.

⁶ *Bank of United States v. Planters' Bank*, 9 Wheat. 906, 6 L. ed. 244.

plies only to original suits, and not to appeals or writs of error;⁷ nor does it extend to suits of admiralty or maritime jurisdiction.⁸

It is a universal principle, that where jurisdiction depends upon the party, it is the party named in the record; accordingly, the provision would be, it would seem, limited to suits where a state is a party on the record,⁹ but the amendment was adopted for the protection of the states, and to construe it that a state's property might be alienated in a suit against an officer would deprive the state of its day in court.¹⁰ Accordingly, it is now settled that the question whether a suit is within the prohibition is not always to be determined by reference to the nominal parties to the record,¹¹ and, while the provision is to be substantially applied in the furtherance of its intention,¹² the court will look beyond the record to determine the real parties to the suit.¹³ So where a suit is against the governor of a state as such and the claim made upon him is entirely in his official character, the state itself may be deemed to be a party,¹⁴ and a proceeding by injunction to compel the specific performance of a state's contract by forbidding all acts which constitute breaches thereof is a suit against the state, even though it be not nominally a party to the record.¹⁵ So, also, as to a suit against a state treasurer to compel him to refund

⁷ *Cohen v. Virginia*, 6 Wheat. 405, 5 L. ed. 257.

⁸ *Ex parte Madrazo*, 7 Pet. 627, 8 L. ed. 808; *Olmstead's Case*, Bright, 9.

⁹ *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204; *Governor of Georgia v. Madrazo*, 1 Pet. 123, 7 L. ed. 78; *Louisville etc. R. R. Co. v. Letson*, 2 How. 551, 11 L. ed. 353.

¹⁰ *Preston v. Walsh*, 10 Fed. 1015; *Chaffraix v. Board of Liquidation*, 11 Fed. 638.

¹¹ *Pennoyer v. McConnaughy*, 140 U. S. 12, 11 S. Ct. 699, 35 L. ed. 363.

¹² *Peindexter v. Greenhow*, 114 U. S. 287, 5 S. Ct. 903, 24 L. ed. 185.

¹³ *Pennoyer v. McConnaughy*, 140 U. S. 12, 11 S. Ct. 699, 35 L. ed. 363.

¹⁴ *Governor of Georgia v. Madrazo*, 1 Pet. 123, 7 L. ed. 78.

¹⁵ *In re Ayers*, 123 U. S. 503, 8 S. Ct. 164, 31 L. ed. 216.

money adjudged to have been taken under an illegal assessment.¹⁶

The immunity of the states from suit secured by the Eleventh Amendment includes not only direct actions for damages for breach of contract brought against a state by name, but all other actions or suits against it, whether at law or in equity,¹⁷ and the court cannot proceed to a determination of a suit wherein a state is an indispensable party without its presence and consent to be sued;¹⁸ the immunity is absolute although the sole object of a suit may be to bring the state within the prohibition against laws impairing the obligation of contracts.¹⁹ A federal court has no jurisdiction of a cross-bill filed by a person intervening in a suit wherein a state is a party plaintiff.²⁰

— When Inapplicable.

The amendment provides, however, that no suit shall be commenced or prosecuted against a state and precludes such suits only,²¹ and if a state is not necessarily a defendant, the prohibition is inapplicable, notwithstanding the state's interests may be incidentally affected.²² So the mere suggestion that a state is a necessary party, without averment or proof, is insufficient to oust jurisdiction,²³ and where, after the suggestion of a state's title to land in the possession of an individual, the

¹⁶ *Smith v. Reeves*, 178 U. S. 439, 20 S. Ct. 919, 44 L. ed. 1140.

¹⁷ *In re Ayers*, 123 U. S. 502, 8 S. Ct. 164, 31 L. ed. 216.

¹⁸ *New Hampshire v. Louisiana*, 108 U. S. 85, 2 S. Ct. 176, 27 L. ed. 656; *Hagood v. Southern*, 117 U. S. 71, 6 S. Ct. 608, 29 L. ed. 805.

¹⁹ *Pennoyer v. McConnaughy*, 140 U. S. 9, 11 S. Ct. 699, 35 L. ed. 363.

²⁰ *Bank of Washington v. Arkansas*, 20 How. 532, 15 L. ed. 993.

²¹ *United States v. Peters*, 5 Cr. 139, 3 L. ed. 53; *Cohen v. Virginia*, 6 Wheat. 264, 5 L. ed. 257. And see *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204.

²² *Fowler v. Lindsay*, 3 Dall. 412, 1 L. ed. 658; *United States v. Peters*, 5 Cr. 139, 3 L. ed. 53; *Louisville Ry. Co. v. Letson*, 2 How. 550, 11 L. ed. 358; *Howell v. Miller*, 91 Fed. 135.

²³ *South Carolina v. Wesley*, 155 U. S. 544, 15 S. Ct. 231, 39 L. ed. 254.

court decides that the state has no title, it cannot resist legal process in the case.²⁴ The mere averment of a defendant that he holds as the representative of a state is insufficient to deprive a federal court of jurisdiction.²⁵

The fact that a state is a member of a corporation does not invest the corporation with any of the state's sovereignty so as to exempt it from suit in the federal courts,²⁶ and this is true, though the state be the sole stockholder.²⁷ A state, by becoming interested in a corporation, lays down its sovereignty so far as respects the transactions of the corporation,²⁸ and to that extent is deemed to waive its nonsuability.²⁹

The provision restricts jurisdiction only in suits against states; accordingly where counties are, under a state constitution, suable as municipal corporations, the federal courts have jurisdiction of suits against them,³⁰ and it seems that a state's waiver of its exemption from suit in any court of a certain county would include a federal court located in that county.³¹

²⁴ *United States v. Peters*, 5 Cr. 115, 3 L. ed. 53; *Osborne v. United States Bank*, 9 Wheat. 738, 6 L. ed. 204.

²⁵ *Tindal v. Wesley*, 167 U. S. 214, 17 S. Ct. 774, 42 L. ed. 137.

²⁶ *Bank of United States v. Planters' Bank*, 9 Wheat. 904, 6 L. ed. 244; *Louisville Ry. Co. v. Letson*, 2 How. 550, 11 L. ed. 353.

²⁷ *Bank of Kentucky v. Wister*, 2 Pet. 323, 7 L. ed. 437, 3 Pet. 431, 7 L. ed. 731.

²⁸ *Briscoe v. Bank of Kentucky*, 11 Pet. 325, 9 L. ed. 709; *Curran v. Arkansas*, 15 How. 309, 14 L. ed. 705; *Southern Ry. Co. v. N. C. R. Co.*, 81 Fed. 600.

²⁹ *Bank of Kentucky v. Wister*, 2 Pet. 323, 7 L. ed. 437.

³⁰ *Lincoln Co. v. Luning*, 133 U. S. 898, 10 S. Ct. 363, 33 L. ed. 766.

³¹ *Reagan v. Farmers' Loan etc. Co.*, 154 U. S. 392, 14 S. Ct. 1062, 36 L. ed. 1014.

ARTICLE XII.**ELECTION OF PRESIDENT AND VICE-PRESIDENT.**

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the

right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall chose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment, proposed 12th December, 1803; ratified 25th September, 1804.

The appointment and mode of appointment of electors belong exclusively to the states; but the time of choosing them, and the day upon which they are to give their votes is left to Congress. If a state law fixes a date for the meeting of presidential electors different from that prescribed by act of Congress, if such provision is separable from the others it may be rejected, and the law remain otherwise complete and valid.¹

Presidential electors are not officers or agents of the United States.²

¹ *McPherson v. Blacker*, 146 U. S. 35-41, 13 S. Ct. 3, 36 L. ed. 369.

² *In re Green*, 134 U. S. 379, 10 S. Ct. 586, 33 L. ed. 951.

ARTICLE XIII.

SECTION I.

SLAVERY PROHIBITED.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The object of this provision was to deprive both Congress and the several states of the power to reduce any persons to a condition of slavery or involuntary servitude, except as a punishment for crime.¹ The term "involuntary servitude" is more comprehensive than slavery, and while designed primarily to free the negro, the amendment comprehends and forbids also peonage, or the Chinese coolie system.² The servitude prohibited is personal servitude; the use of the word "involuntary" conclusively shows that such was the intention.³ The amendment is a positive declaration that slavery shall not exist.⁴ An indenture of apprenticeship in violation of state laws is an involuntary servitude within this clause;⁵ and an act providing that vagrants shall be hired out to the highest bidder has been declared to be in conflict with this amendment.⁶

It was not intended by this prohibition to give positive relief to persons unlawfully deprived of their liberty; its purpose

¹ *People v. Washington*, 36 Cal. 658.

² *Slaughter-house Cases*, 16 Wall. 69, 21 L. ed. 394; *In re Turner*, 1 Abb. U. S. 84, Fed. Cas. No. 14,247; *In re Thompson*, 117 Mo. 90, 38 Am. St. Rep. 642, 22 S. W. 865. And see *United States v. Wong Kim Ark*, 169 U. S. 677, 18 S. Ct. 467, 42 L. ed. 890.

³ *Slaughter-house Cases*, 16 Wall. 69, 21 L. ed. 394; *In re Turner*, 1 Abb. U. S. 84, Fed. Cas. No. 14,247.

⁴ *United States v. Cruikshank*, 92 U. S. 543, 23 L. ed. 588.

⁵ *In re Turner*, 1 Abb. U. S. 184, Fed. Cas. No. 14,247.

⁶ *In re Thompson*, 117 Mo. 90, 38 Am. St. Rep. 642, 22 S. W. 865.

is satisfied when such restraint is rendered unlawful.⁷ The effect of emancipation was to make slaves freemen,⁸ and the utmost effect of this amendment is to declare the colored to be as free as the white race—it gives the colored race no more than freedom.⁹ It extends only to slavery and its incidents, and not to the protection of privileges.¹⁰ Accordingly there can be no constitutional objection to a state law requiring railroad companies to provide separate accommodations for whites and negroes.¹¹

Contracts relating to slaves, valid when entered into, were not affected by the Thirteenth Amendment,¹² and so notes and mortgages given to secure the payment of the purchase price of slaves were enforceable notwithstanding the abolition of slavery.¹³

⁷ *People v. Brady*, 40 Cal. 198.

⁸ *Texas v. White*, 7 Wall. 728, 19 L. ed. 227.

⁹ *Bowlin v. Commonwealth*, 2 Bush, 5. And see *United States v. Rhodes*, 1 Abb. U. S. 28, Fed. Cas. No. 16,151.

¹⁰ *Civil Rights Cases*, 109 U. S. 25, 3 S. Ct. 18, 27 L. ed. 835.

¹¹ *Plessy v. Ferguson*, 163 U. S. 542, 16 S. Ct. 1140, 41 L. ed. 256; affirming *Ex parte Plessy*, 45 La. Ann. 87, 11 South. 948, 18 L. R. A. 639; *Anderson v. Louisville etc. Ry. Co.*, 62 Fed. 48.

¹² *Osborn v. Nicholson*, 13 Wall. 602, 20 L. ed. 689; *White v. Hart*, 13 Wall. 646, 20 L. ed. 685; *Boyce v. Tabb*, 18 Wall. 548, 21 L. ed. 757; *McElvain v. Mudd*, 44 Ala. 48, 4 Am. Rep. 106; *Roundtree v. Baker*, 52 Ill. 241, 4 Am. Rep. 597.

¹³ *Holmes v. Sevier*, 154 U. S. 583, 14 S. Ct. 1203, 20 L. ed. 876; *Richardson v. Thomas*, 28 Ark. 389; *Blease v. Pratt*, 3 S. C. 514; *Henderlite v. Thurman*, 22 Gratt. 480, 12 Am. Rep. 536.

SECTION 2.

Congress shall have power to enforce this article by appropriate legislation.

Amendment, proposed 1st February, 1865; declared ratified, 18th December, 1865.

This clause gives to Congress the power to protect all persons within the jurisdiction of the United States from being in any way subjected to slavery or involuntary servitude, except as a punishment for crime.¹ Legislation which practically tends to secure the full enjoyment of personal freedom is "appropriate;"² e. g., a law prohibiting involuntary servitude in the form of peonage.^{2a}

The clause authorizes Congress to pass such laws as are appropriate, but not to annul state laws or control their operation.³ The "power to enforce this article by appropriate legislation" imports nothing more than the power to uphold the emancipating section, and prevent a violation of the liberty of the enfranchised race.⁴ Accordingly, Congress has no power to enact laws prohibiting the denial of equal accommodations in inns, theaters, and hotels, on account of race or color.^{4a} The power to pass laws for the punishment of ordinary crimes and offenses belongs exclusively to the states,⁵ but Congress may pass an act removing the disabilities of negroes to sue or to testify,⁶

¹ *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290.

² *People v. Washington*, 36 Cal. 658.

^{2a} *In re Lewis*, 114 Fed. 963.

³ *People v. Brady*, 40 Cal. 198.

⁴ *Bowlin v. Commonwealth*, 2 Bush, 5.

^{4a} *Civil Rights Cases*, 109 U. S. 25, 3 S. Ct. 18, 27 L. ed. 835.

⁵ *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290; *United States v. Cruikshank*, 92 U. S. 543, 23 L. ed. 588.

⁶ *Handy v. Clark*, 4 Houst. 6; *State v. Bash*, 1 Houst. Del. Crim. 271.

and a law which permits only the same class of persons to testify against a negro as are allowed to testify against a white man, where personal liberty is concerned, tends to enforce this amendment and is valid.⁷

⁷ United States v. Rhodes, 1 Abb. U. S. 34, Fed. Cas. No. 16,151; People v. Washington, 36 Cal. 658. But see Bowlin v. Commonwealth, 2 Bush, 5.

ARTICLE XIV.**CITIZENSHIP, REPRESENTATION, AND PUBLIC DEBT.****SECTION 1.****WHO ARE CITIZENS—RIGHTS OF.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Object and Scope of the Amendment.

The opening sentence of the Fourteenth Amendment is affirmative and declaratory, and was intended to allay doubts and settle controversies which had arisen.¹ The amendment conferred no new rights, but merely extended the protection of the federal constitution over the rights of life, liberty and property that previously existed under all state constitutions.² Article IV, section 2, and the Fourteenth Amendment are both directed against state action, their object being to place citizens of each state on the same footing as citizens of the other states.³

This amendment is a restriction on the states as distinguished from the restrictions placed on the general government by the

¹ *United States v. Wong Kim Ark*, 169 U. S. 666, 18 S. Ct. 456, 42 L. ed. 890.

² *Mobile etc. R. R. v. Tennessee*, 153 U. S. 506, 14 S. Ct. 968, 38 L. ed. 793.

³ *United States v. Harris*, 106 U. S. 643, 1 S. Ct. 601, 27 L. ed. 290.

Fifth Amendment.⁴ It limits the exercise of the powers of the state with reference to the individual or his property,⁵ and it applies not only to the state specifically but to all its instrumentalities and agencies, to its executive, legislative and judicial departments, and it covers the acts of all state officers as such.⁶ It is applicable, however, only to the passage and enforcement of laws, not to mere administration.⁷ It nullifies all state legislation and state action impairing the privileges of citizens or injuring them in life, liberty or property without due process of law, or denying equal protection of the laws,⁸ but it was not designed to extend to or override public rights or servitudes, existing in the form of easements, held by the courts of a state to be valid under the state constitution and laws.⁹

The prohibitions are of acts of states and not of private individuals,¹⁰ and the amendment cannot be said to be impaired by the wrongful acts of individuals unsupported by state authority.¹¹ Any wrongful act done by an individual under the authority of the state is prohibited.¹²

⁴ *Virginia v. Rives*, 100 U. S. 313, 25 L. ed. 667; *United States v. Harris*, 106 U. S. 627, 1 S. Ct. 601, 27 L. ed. 290; *Civil Rights Cases*, 109 U. S. 17, 3 S. Ct. 18, 27 L. ed. 835; *Le Grand v. United States*, 12 Fed. 581; *Railroad Tax Cases*, 18 Fed. 385; *St. Louis v. Richeson*, 76 Mo. 470.

⁵ *San Mateo County v. Southern Pacific R. R. Co.*, 8 Saw. 238, 13 Fed. 722.

⁶ *Chicago etc. R. R. Co. v. Chicago*, 166 U. S. 233, 17 S. Ct. 581, 41 L. ed. 979; *Scott v. McNeal*, 154 U. S. 45, 14 S. Ct. 1108, 38 L. ed. 896; *Ah Kow v. Nunan*, 5 Saw. 552, Fed. Cas. No. 6546; *Parrott's Case*, 6 Saw. 349, 1 Fed. 481.

⁷ *Claybrook v. Owensboro*, 16 Fed. 297; *Smoot v. Kentucky Cent. R. R.*, 13 Fed. 337.

⁸ *Civil Rights Cases*, 109 U. S. 11-17, 3 S. Ct. 18, 27 L. ed. 835.

⁹ *Eldridge v. Trezevant*, 160 U. S. 468, 16 S. Ct. 345, 40 L. ed. 490.

¹⁰ *Virginia v. Rives*, 100 U. S. 313, 25 L. ed. 667; *United States v. Harris*, 106 U. S. 639, 1 S. Ct. 609, 27 L. ed. 290; *Le Grand v. United States*, 12 Fed. 580; *Smoot v. Kentucky etc. R. R. Co.*, 13 Fed. 844; *Kiernan v. Multnomah*, 95 Fed. 849.

¹¹ *Civil Rights Cases*, 109 U. S. 12, 3 S. Ct. 22, 27 L. ed. 835.

¹² *Pacific Gas Imp. Co. v. Ellert*, 64 Fed. 430; *Nashville etc. Ry. Co. v. Taylor*, 86 Fed. 124.

— Effect on Police Power.

The police power was reserved by the states at the time the original constitution was adopted,¹³ and the Fourteenth Amendment was not designed to interfere in the least with the exercise of that power.¹⁴ It does not limit the subjects upon which the police power of the states may be exerted,¹⁵ nor does it interfere with the powers of the courts in administering process provided by police regulations.¹⁶

Citizenship.

The Fourteenth Amendment is one of a series having a common object—the securing to the negro race of all the civil rights enjoyed by the white race, and the placing of such enjoyment under the protection of the federal government;¹⁷ and the first clause of section 1, by defining United States citizenship, brought the negro within the definition and conferred citizenship upon his race.¹⁸ This clause also establishes a citizenship of the United States distinct from the citizenship of the individual states.¹⁹

¹³ *Mugler v. Kansas*, 123 U. S. 665, 8 S. Ct. 273, 31 L. ed. 205.

¹⁴ *Slaughter-house Cases*, 16 Wall. 63, 21 L. ed. 394; *Barbier v. Connolly*, 113 U. S. 31, 5 S. Ct. 357, 28 L. ed. 923; *Mugler v. Kansas*, 123 U. S. 665, 8 S. Ct. 273, 31 L. ed. 205; *Powell v. Pennsylvania*, 127 U. S. 683, 8 S. Ct. 992, 32 L. ed. 253; *In re Bahrer*, 140 U. S. 555, 11 S. Ct. 865, 35 L. ed. 572; *Giozza v. Tiernan*, 148 U. S. 662, 13 S. Ct. 721, 37 L. ed. 599; *Davis v. Massachusetts*, 167 U. S. 47, 17 S. Ct. 731, 42 L. ed. 71; *Deems v. Mayor*, 80 Md. 164, 45 Am. St. Rep. 339, 30 Atl. 648, 26 L. R. A. 541; *State v. Schlenker*, 112 Iowa, 642, 84 Am. St. Rep. 360, 84 N. W. 698, 51 L. R. A. 347.

¹⁵ *Minneapolis Ry. v. Beckwith*, 129 U. S. 29, 9 S. Ct. 207, 32 L. ed. 585; *Jones v. Brim*, 166 U. S. 182, 17 S. Ct. 282, 41 L. ed. 677; *St. Louis etc. Ry. Co. v. Mathews*, 165 U. S. 25, 17 S. Ct. 252, 41 L. ed. 611; *State v. Tutty*, 41 Fed. 762, 7 L. R. A. 50; *Youngblood v. Birmingham*, 95 Ala. 526, 36 Am. St. Rep. 249, 12 South. 581, 20 L. R. A. 58.

¹⁶ *In re Converse*, 137 U. S. 632, 11 S. Ct. 191, 34 L. ed. 796.

¹⁷ *Strauder v. West Virginia*, 100 U. S. 807, 25 L. ed. 664; *Bush v. Kentucky*, 107 U. S. 118, 1 S. Ct. 632, 27 L. ed. 354; *Claybrook v. Owensboro*, 16 Fed. 302.

¹⁸ *Slaughter-house Cases*, 16 Wall. 72, 21 L. ed. 394.

¹⁹ *Slaughter-house Cases*, 16 Wall. 73, 21 L. ed. 394; *Boyd v. Nebraska*, 143 U. S. 158, 18 S. Ct. 375, 36 L. ed. 103; *United States v.*

The word "citizen," as used in the constitution, means a member of the nation, owing allegiance thereto and entitled to protection therefrom; in its broad sense it is synonymous with "subject" and "inhabitant," and conveys only the idea of membership in a nation;²⁰ in this sense allegiance on the one side and protection on the other constitutes citizenship,^{20a} and the term "citizen" is entirely analogous to "subject" at common law.²¹ "Subject to the jurisdiction" of the United States means, not merely subject to that jurisdiction in some respects, but completely subject to it, and owing the United States immediate allegiance;²² accordingly the phrase excludes, as it was undoubtedly intended to exclude, children of foreign ministers and consuls and subjects of foreign states transiently within the United States.²³

This section contemplates two sources of citizenship, and but two—birth and naturalization;²⁴ so "citizen" as here used is not synonymous with "resident"; residence within the jurisdiction of the United States does not necessarily constitute one a citizen of the United States.²⁵ So, also, an Indian, although born within the territorial limits of the United States, if he belongs to a tribe recognized as such by the United States, is not a citizen and cannot acquire United States citizenship by severing his tribal relations.²⁶ This section does not confer any

Anthony, 11 Blatchf. 203, Fed. Cas. No. 14,459; *Cully v. Baltimore etc. R. R. Co.*, 1 Hughes, 536, Fed. Cas. No. 3466; *In re Kammler*, 136 U. S. 448, 10 S. Ct. 930, 34 L. ed. 519.

²⁰ *Minor v. Happersett*, 21 Wall. 166, 22 L. ed. 627.

^{20a} *Smith v. Moody*, 26 Ind. 305.

²¹ *United States v. Rhodes*, 1 Abb. U. S. 39, Fed. Cas. No. 16,151; *McKay v. Campbell*, 2 Saw. 129, Fed. Cas. No. 8840; *North Carolina v. Manuel*, 4 Dev. & B. 20.

²² *Elk v. Wilkins*, 112 U. S. 103, 5 S. Ct. 41, 28 L. ed. 643; *United States v. Wong Kim Ark*, 169 U. S. 676, 18 S. Ct. 467, 42 L. ed. 890, affirming 71 Fed. 335.

²³ *Slaughter-house Cases*, 16 Wall. 73, 21 L. ed. 394.

²⁴ *Elk v. Wilkins*, 112 U. S. 103, 5 S. Ct. 41, 28 L. ed. 643.

²⁵ *Robertson v. Cease*, 97 U. S. 648, 24 L. ed. 1057.

²⁶ *Elk v. Wilkins*, 112 U. S. 103, 5 S. Ct. 41, 28 L. ed. 643; *Paul v. Chilsoquie*, 70 Fed. 402; *McKay v. Campbell*, 2 Saw. 129, Fed. Cas. No. 8840. And see *Smith v. United States*, 151 U. S. 56, 14 S. Ct. 234, 38 L. ed. 67.

rights of citizenship upon persons of foreign birth;²⁷ in order to make an alien a citizen of the United States, as distinguished from a citizen of a state, naturalization under the rules prescribed by Congress is necessary.²⁸ But while Chinese persons not born in this country have never been recognized as citizens of the United States nor authorized to become naturalized,²⁹ yet the power to make citizens by naturalization cannot exclude Chinese persons born here from the inclusive operation of the phrase "all persons born in the United States and subject to the jurisdiction thereof."³⁰ Accordingly an American-born child of alien parents cannot be excluded upon his return with his parents from a temporary visit abroad.³¹

The naturalization of a father confers United States citizenship upon his minor children,³² and this though they were born out of the United States, if they were living therein at the time of their father's naturalization.³³ If the naturalization is completed before a child attains his majority his status as a citizen is fixed, but if he becomes of age between the date of his father's declaration of intention and the date of naturalization, his status is merely inchoate and may be repudiated.³⁴

A woman is a "person" within the meaning of the Fourteenth Amendment,³⁵ and the word "citizen" includes women born within the United States and subject to their jurisdiction.³⁶ The marriage of an alien-born woman, entitled to be natural-

²⁷ *Van Valkenburg v. Brown*, 43 Cal. 43, 13 Am. Rep. 136.

²⁸ *Boyd v. Nebraska*, 143 U. S. 158, 12 S. Ct. 375, 36 L. ed. 103.

²⁹ *Fong Yue Ting v. United States*, 149 U. S. 716, 13 S. Ct. 1016, 37 L. ed. 905; *In re Ah Yup*, 5 Saw. 155, Fed. Cas. No. 104.

³⁰ *United States v. Wong Kim Ark*, 169 U. S. 704, 18 S. Ct. 456, 42 L. ed. 890. And see *State v. Ah Chew*, 16 Nev. 51, 40 Am. Rep. 488.

³¹ *In re Giovanna*, 93 Fed. 660; *In re Look Tin Sing*, 21 Fed. 905; *Lee Sing Far v. United States*, 94 Fed. 836.

³² *Campbell v. Gordon*, 6 Cr. 183, 3 L. ed. 190.

³³ *Gumm v. Hubbard*, 97 Mo. 311, 10 Am. St. Rep. 312, 11 S. W. 601.

³⁴ *Boyd v. Nebraska*, 143 U. S. 177, 12 S. Ct. 375, 36 L. ed. 103.

³⁵ *Ritchie v. People*, 155 Ill. 98, 46 Am. St. Rep. 315, 40 N. E. 454, 20 L. R. A. 79.

³⁶ *In re Lockwood*, 154 U. S. 117, 14 S. Ct. 1082, 38 L. ed. 929.

ized, with a citizen makes her a citizen,³⁷ and the marriage of a woman to a son made a citizen by virtue of his father's naturalization confers citizenship upon her.³⁸ A feme citizen does not become an alien by her marriage to an alien, although the latter be an enemy of this country.³⁹

While a citizen of the United States in any state of the Union is a citizen of the state wherein he resides,⁴⁰ yet this section recognizes a difference between citizens of the United States and citizens of a state.⁴¹ A person may be a citizen of the United States without being a citizen of any state,⁴² and rights of citizenship may be different from those enjoyed as a citizen of a state.⁴³ The states may confer upon individuals the rights of citizens within their borders, but they cannot invest them with the character or rights of United States citizens.⁴⁴ Thus the right of suffrage is not coextensive with United States citizenship.⁴⁵ A naturalized citizen is a citizen of the United States, and derives his rights from the federal constitution,⁴⁶ but the right to vote in the states comes from the states.⁴⁷

³⁷ *Kelly v. Owen*, 7 Wall. 498, 19 L. ed. 283; *Kreitz v. Behrensmeyer*, 125 Ill. 141, 8 Am. St. Rep. 349, 17 N. E. 232.

³⁸ *Dorsey v. Brigham*, 177 Ill. 250, 69 Am. St. Rep. 228, 52 N. E. 303, 42 L. R. A. 809.

³⁹ *Shanks v. Dupont*, 3 Pet. 246, 7 L. ed. 666.

⁴⁰ *Gassies v. Ballou*, 6 Pet. 762, 8 L. ed. 573; *Boyd v. Nebraska*, 143 U. S. 158, 12 S. Ct. 375, 36 L. ed. 103.

⁴¹ *Slaughter-house Cases*, 16 Wall. 72, 73, 21 L. ed. 394; *Frasher v. State*, 3 Tex. App. 267, 30 Am. Rep. 131.

⁴² *Slaughter-house Cases*, 16 Wall. 74, 21 L. ed. 394; *United States v. Cruikshank*, 92 U. S. 543, 23 L. ed. 588; *Marks v. Marks*, 75 Fed. 324; *Cully v. Baltimore etc. R. R. Co.*, 1 Hughes, 536, Fed. Cas. No. 3466.

⁴³ *United States v. Cruikshank*, 92 U. S. 549, 23 L. ed. 588; *Keller v. Corpus Christi*, 50 Tex. 529, 32 Am. Rep. 616.

⁴⁴ *Dred Scott v. Sandford*, 19 How. 405-407, 15 L. ed. 691; *Minneapolis v. Reum*, 56 Fed. 581.

⁴⁵ *Minor v. Happersett*, 21 Wall. 178, 22 L. ed. 627; *Gougar v. Timberlake*, 148 Ind. 41, 62 Am. St. Rep. 489, 46 N. E. 339, 37 L. R. A. 644; *McPherson v. Blacker*, 146 U. S. 37, 13 S. Ct. 3, 36 L. ed. 869.

⁴⁶ *Osborne v. United States Bank*, 9 Wheat. 827, 6 L. ed. 204.

⁴⁷ *United States v. Cruikshank*, 92 U. S. 556, 23 L. ed. 588.

Privileges and Immunities.*

The prohibition against the abridgment of the privileges and immunities of "citizens of the United States" means only privileges and immunities incident to citizenship of the United States as distinguished from citizenship of the several states.⁴⁸ Protection extends only to those privileges and immunities arising out of the nature and essential character of the federal government and granted or secured by the constitution;⁴⁹ they are not identical with those referred to in article IV, section 2, clause 1.⁵⁰ This amendment prohibits the abridgment of privileges or immunities of citizens of the United States, but there is nothing in it which prevents the abridgment of privileges or immunities incident only to state citizenship.⁵¹ The "privileges and immunities" guaranteed to citizens of the states secures the right of such citizens to pass unmolested into any other state for lawful commerce, to acquire and hold real and personal property, to maintain actions in the courts and to be exempt from higher taxes than are imposed by a state on its own citizens;⁵² while those of national citizenship include the right to go to the seat of government and transact business with it; the right of free access to its seaports, and the right to demand the care and protection of the government wherever the citizen may be.⁵³

The Fourteenth Amendment adds nothing to the rights of one citizen as against another;⁵⁴ nor does it add to the privi-

⁴⁸ *Slaughter-house Cases*, 16 Wall. 74-80, 21 L. ed. 394.

⁴⁹ *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 485; *Philbrook v. Newman*, 85 Fed. 142; *State v. Wilson*, 121 N. C. 462, 28 S. E. 559; *State v. McCann*, 21 Ohio St. 198.

⁵⁰ *Slaughter-house Cases*, 16 Wall. 74-80, 21 L. ed. 394. The "privileges and immunities" referred to in article IV are such as a state gives to its citizens. See, ante, p. 572 et. seq.

⁵¹ *Slaughter-house Cases*, 16 Wall. 74-80, 21 L. ed. 394; *Ex parte Kinney*, 3 Hughes, 9, Fed. Cas. No. 7825; *Ex parte Francois*, 9 Woods, 367, Fed. Cas. No. 5047; *Livestock etc. Assn. v. Crescent City etc. Co.*, 1 Abb. U. S. 398, Fed. Cas. No. 8408; *Short v. State*, 80 Md. 392, 31 Atl. 322, 29 L. R. A. 404; *People v. Gallagher*, 11 Abb. N. C. 187.

⁵² *Ward v. Maryland*, 12 Wall. 430, 20 L. ed. 449.

⁵³ *Slaughter-house Cases*, 16 Wall. 79, 21 L. ed. 394.

⁵⁴ *United States v. Cruikshank*, 92 U. S. 554, 23 L. ed. 588;

*See p. 572 et seq. for privileges of state citizenship.

leges and immunities existing at the time of its adoption.⁵⁵ It simply furnishes an additional guaranty against encroachment on those already existing.⁵⁶ It does not, however, merely guarantee that there shall be equality of privileges and immunities, but that they shall be absolutely unabridged and unimpaired.⁵⁷ It forbids, so far as civil and political rights are concerned, any discrimination by the states against a citizen because of his race,⁵⁸ but it does not operate to extend the prohibitions of the Fourth and Fifth Amendments to the states.⁵⁹

The purpose of this clause was to confer upon the colored race perfect equality of civil and political rights with whites,⁶⁰ and to prevent any person or class from being made the object of discriminating or hostile legislation.⁶¹ But the equality contemplated was not social equality; it was not intended that there should be a social equality between the races or a commingling of them on terms unsatisfactory to either.⁶² The courts have never attempted to define or enumerate the privileges and immunities guaranteed, and in construing the provision the meaning of the words "privileges" and "immunities"

Presser v. Illinois, 116 U. S. 266, 6 S. Ct. 586, 29 L. ed. 615; *In re Kemmler*, 136 U. S. 448, 10 S. Ct. 934, 34 L. ed. 519.

⁵⁵ *Minor v. Happersett*, 21 Wall. 171, 22 L. ed. 627; *Holden v. Hardy*, 169 U. S. 383, 18 S. Ct. 385, 42 L. ed. 780; *Ward v. Flood*, 48 Cal. 36; *McPherson v. Secretary of State*, 92 Mich. 390, 31 Am. St. Rep. 596, 52 N. W. 473, 16 L. B. A. 475.

⁵⁶ *United States v. Cruikshank*, 92 U. S. 554, 23 L. ed. 588; *Minor v. Happersett*, 21 Wall. 171, 22 L. ed. 627; *Van Valkenburg v. Brown*, 43 Cal. 43; *Ex parte Plessy*, 45 La. Ann. 87, 11 South. 951, 18 L. B. A. 639.

⁵⁷ *Livestock etc. Assn. v. Crescent City etc. Co.*, 1 Abb. U. S. 398, Fed. Cas. No. 8408.

⁵⁸ *Williams v. Mississippi*, 170 U. S. 219, 18 S. Ct. 583, 42 L. ed. 1012.

⁵⁹ *People v. Fish*, 125 N. Y. 151, 26 N. E. 323; *State v. Atkinson*, 40 S. C. 371, 42 Am. St. Rep. 884, 18 S. E. 1024.

⁶⁰ *Virginia v. Rives*, 100 U. S. 318, 25 L. ed. 667; *Ex parte Virginia*, 100 U. S. 345, 25 L. ed. 667.

⁶¹ *McPherson v. Blacker*, 146 U. S. 39, 13 S. Ct. 3, 36 L. ed. 869.

⁶² *Plessy v. Ferguson*, 163 U. S. 544, 16 S. Ct. 1138, 41 L. ed. 256.

should be determined in each case upon a view of the particular rights asserted and denied therein.⁶³

The right of intermarriage is not a privilege or immunity of United States citizenship protected by this amendment, marriage laws being under the control of the states.⁶⁴ So the states may provide against miscegenation and make it a felony,⁶⁵ and a statute prescribing a greater punishment for adultery or fornication when committed by a negro and a white person, than when committed by two whites or two negroes, does not violate this amendment; the discrimination is not against race but against an offense which may result in the amalgamation of the two races and a degraded civilization.⁶⁶

State laws which afford equal advantages and privileges for the education of white and colored children, and merely separate them for the purpose of receiving instruction, do not deprive anyone of the privileges or immunities of United States citizenship, but are reasonable regulations for the exercise of such rights,⁶⁷ and the failure of a school board to maintain a high school for colored children because of lack of funds to do so without closing a colored primary school does not violate this provision.⁶⁸ Provisions for the education of Mongolian

⁶³ *Conner v. Elliott*, 18 How. 593, 15 L. ed. 497; *Holden v. Hardy*, 169 U. S. 366, 42 L. ed. 780; *Ex parte Hobbs*, 1 Woods, 542, Fed. Cas. No. 6550; *Livestock etc. Assn. v. Crescent City etc. Co.*, 1 Abb. U. S. 397, Fed. Cas. No. 8408.

⁶⁴ *Conner v. Elliott*, 18 How. 593, 15 L. ed. 497; *Ex parte Hobbs*, 1 Woods, 537, Fed. Cas. No. 6550; *Ex parte Kinney*, 3 Hughes, 9, Fed. Cas. No. 7825; *Ex parte Francois*, 3 Woods, 367, Fed. Cas. No. 5047; *Lonas v. State*, 3 Heisk. 287; *Green v. State*, 58 Ala. 190, 29 Am. Rep. 739; *State v. Gibson*, 36 Ind. 389, 10 Am. Rep. 42; *State v. Jackson*, 80 Mo. 175, 50 Am. Rep. 499.

⁶⁵ *Frasher v. State*, 3 Tex. App. 262; *State v. Gibson*, 36 Ind. 389, 10 Am. Rep. 42.

⁶⁶ *Pace v. Alabama*, 106 U. S. 585, 1 S. Ct. 637, 27 L. ed. 207, affirming 69 Ala. 231, 44 Am. Rep. 513.

⁶⁷ *Bertonneau v. City Directors*, 3 Woods, 177, Fed. Cas. No. 1361; *United States v. Buntin*, 12 Fed. 730; *Claybrook v. City of Owensboro*, 16 Fed. 297; *Lehew v. Brummell*, 103 Mo. 546, 23 Am. St. Rep. 895, 15 S. W. 765, 11 L. R. A. 828.

⁶⁸ *Cumming v. Board of Education*, 175 U. S. 545, 20 S. Ct. 197, 44 L. ed. 262.

children in separate schools rest upon the same ground and are valid in the absence of discrimination.⁶⁹

A law which authorizes the separation of the white and colored races in public conveyances is a reasonable exercise of the police power and not repugnant to this amendment.⁷⁰

Although the supreme court has declared it to be doubtful whether the Fourteenth Amendment had any other aim than to prevent discrimination because of race or color,⁷¹ and that state action not directed against negroes will not be construed to be within the limitation unless clearly so,⁷² yet it extends to all persons within the territorial jurisdiction of the United States without regard to race, color, or nationality,⁷³ and prevents any person or class being made the subject of discriminating or hostile legislation.⁷⁴ It applies to white as well as colored persons and is intended to protect them in their privileges and immunities as citizens of the United States against the action of their own state as well as that of other states,⁷⁵ and while special legislation is not repugnant to the amendment if all persons subject to it are treated alike under the same conditions,⁷⁶ partial and arbitrary legislation cannot be sustained.⁷⁷

The enjoyment, upon terms of equality with all others, of the privilege of pursuing an ordinary calling or trade, and

⁶⁹ *Wong Him v. Callahan*, 119 Fed. 381.

⁷⁰ *Plessy v. Ferguson*, 163 U. S. 551, 16 S. Ct. 1138, 41 L. ed. 256, affirming *Ex parte Plessy*, 45 La. Ann. 87, 11 South. 951, 18 L. R. A. 639.

⁷¹ *Stauder v. West Virginia*, 100 U. S. 310, 25 L. ed. 664; *Logan v. United States*, 144 U. S. 289, 12 S. Ct. 624, 36 L. ed. 429.

⁷² *Slaughter-house Cases*, 16 Wall. 81, 21 L. ed. 394.

⁷³ *Yick Wo v. Hopkins*, 118 U. S. 638, 6 S. Ct. 1064, 30 L. ed. 220.

⁷⁴ *McPherson v. Blacker*, 146 U. S. 39, 13 S. Ct. 3, 36 L. ed. 969.

⁷⁵ *Livestock etc. Assn. v. Crescent City etc. Co.*, 1 Abb. U. S. 388, Fed. Cas. No. 8408.

⁷⁶ *Missouri Ry. Co. v. Mackey*, 127 U. S. 209, 8 S. Ct. 1161, 32 L. ed. 107.

⁷⁷ *Caldwell v. Texas*, 137 U. S. 698, 11 S. Ct. 224, 34 L. ed. 816; *Atchison etc. R. R. Co. v. Matthews*, 174 U. S. 104, 19 S. Ct. 609, 43 L. ed. 909.

acquiring and selling property, is an essential part of a citizen's rights guaranteed by the Fourteenth Amendment,⁷⁸ and an ordinance giving supervisors arbitrary power to withhold permits to conduct a certain business—e. g., laundering—without regard to any just rule, is void.⁷⁹ The regulation of the manner and times when such business shall be carried on, however, violates no constitutional prohibition.⁸⁰ The right to practice law in the courts of a state is not a privilege incident to United States citizenship;⁸¹ hence an act limiting the admission of attorneys to white male citizens is not repugnant to the Fourteenth Amendment.⁸² Nor is the right to practice medicine a privilege of national citizenship.⁸³ The right to sell intoxicating liquors is not a privilege of United States citizenship under this clause.⁸⁴ Nor does the constitutional guaranty vest the citizens of one state with the right to fish or take oysters in another state.⁸⁵

A state has entire control over the procedure in its courts, both in civil and criminal matters, subject only to the restrictions against the denial of fundamental rights, and the positive provisions of the constitution,⁸⁶ and it is not a right, privilege, or immunity of a citizen of the United States to have a

⁷⁸ *Powell v. Pennsylvania*, 127 U. S. 624, 8 S. Ct. 992, 32 L. ed. 253; *Lawton v. Steele*, 152 U. S. 137, 14 S. Ct. 499, 38 L. ed. 365; *Allgeyer v. Louisiana*, 165 U. S. 589, 17 S. Ct. 427, 41 L. ed. 832.

⁷⁹ *Yick Wo v. Hopkins*, 118 U. S. 369, 6 S. Ct. 1064, 30 L. ed. 220.

⁸⁰ *Barbier v. Connolly*, 113 U. S. 30, 5 S. Ct. 357, 28 L. ed. 923; *Soon Hing v. Crowley*, 113 U. S. 708, 5 S. Ct. 730, 28 L. ed. 1145.

⁸¹ *In re Lockwood*, 154 U. S. 117, 14 S. Ct. 1082, 38 L. ed. 929; *Bradwell v. State*, 16 Wall. 130, 21 L. ed. 442.

⁸² *Bradwell v. State*, 16 Wall. 138, 21 L. ed. 442; *Philbrook v. Newman*, 85 Fed. 142; *Robinson's Case*, 181 Mass. 377, 41 Am. Rep. 240; *In re Taylor*, 48 Md. 28.

⁸³ *Ex parte Spinney*, 10 Nev. 323; *France v. State*, 57 Ohio St. 22, 47 N. E. 1044.

⁸⁴ *Bartemeyer v. Iowa*, 18 Wall. 133, 21 L. ed. 929; *Giozza v. Tierman*, 148 U. S. 661, 13 S. Ct. 721, 37 L. ed. 599.

⁸⁵ *McCready v. Virginia*, 94 U. S. 395, 396, 24 L. ed. 248; *State v. Harrub*, 95 Ala. 176, 36 Am. St. Rep. 195, 10 South. 552, 15 L. R. A. 761.

⁸⁶ *Maxwell v. Dow*, 176 U. S. 604, 20 S. Ct. 448, 44 L. ed. 597.

controversy in a state court prosecuted or determined by one form of action instead of by another.⁸⁷ A statute of limitations which provides that it shall not run against an absent defendant if the plaintiff resides in the state, but shall if he resides out of the state, abridges no privilege or immunity of national citizenship.⁸⁸ But a statute providing that in actions in personam against nonresident individuals, service may be made on their resident agents or managers, deprives such nonresidents of a privilege of national citizenship.⁸⁹ Trial by jury in suits at common law in state courts is not a privilege guaranteed by this amendment.⁹⁰

A transfer tax law which applies to remainders created by will before precedent estates terminate and remainders vest is not repugnant to this amendment,⁹¹ but a collateral inheritance tax law undertaking to exempt resident nephews and nieces from its operation is void.⁹²

A statute denying to nonresidents the right of appointment as trustees is invalid as abridging a privilege protected by this article.⁹³ So also is a statute giving the preference to resident creditors in the distribution of an insolvent corporation's assets.⁹⁴

A corporation is not a "citizen" within the meaning of the Fourteenth Amendment;⁹⁵ a corporation has no absolute right

⁸⁷ *Iowa Central Ry. v. Iowa*, 160 U. S. 393, 16 S. Ct. 344, 40 L. ed. 467.

⁸⁸ *Chemung Canal Bank v. Lowery*, 93 U. S. 72, 23 L. ed. 806.

⁸⁹ *Moredock v. Kirby*, 118 Fed. 180.

⁹⁰ *Walker v. Sauvinet*, 92 U. S. 92, 23 L. ed. 678; *Maxwell v. Dow*, 176 U. S. 593, 20 S. Ct. 448, 44 L. ed. 597.

⁹¹ *Orr v. Gilman*, 183 U. S. 289, 22 S. Ct. 213, 46 L. ed. 196.

⁹² *Estate of Mahoney*, 133 Cal. 180, 85 Am. St. Rep. 155, 65 Pac. 389. But see *Magoun v. Illinois etc. Bank*, 170 U. S. 299, 18 S. Ct. 594, 42 L. ed. 1037.

⁹³ *Roby v. Smith*, 131 Ind. 342, 31 Am. St. Rep. 439, 31 N. E. 439.

⁹⁴ *Blake v. McClung*, 176 U. S. 64, 20 S. Ct. 307, 44 L. ed. 371. And see *Sully v. American Nat. Bank*, 178 U. S. 299, 20 S. Ct. 935, 44 L. ed. 1072.

⁹⁵ *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 573, 19 L. ed. 1029; *Philadelphia etc. Assn. v. New York*, 119 U. S. 117, 7 S. Ct. 106, 30 L. ed. 342; *Orient*

of recognition in any other state than the state of its creation,⁹⁶ and without violating this amendment, a state may impose upon a foreign corporation any restrictions it may deem fit, however discriminatory,⁹⁷ or it may exclude such corporations entirely unless restrained by some other provision of the constitution.⁹⁸ A corporation has not the rights of its individual members, and cannot invoke the protection to which those members would be entitled as citizens to bring it within the amendment.⁹⁹

Due Process of Law.*

The phrase "due process of law" is, in terms, extended to the states by the Fourteenth Amendment.¹⁰⁰ As applied to the states, the guaranty adds nothing to the right of one citizen against another, but simply prevents any encroachment by the state upon the fundamental rights which belong to every citizen.¹⁰¹ "Due process of law" as here used refers to the law of the land in each state,¹⁰² deriving its authority from in-

Ins. Co. v. Daggs, 172 U. S. 561, 19 S. Ct. 281, 43 L. ed. 552, affirming 136 Mo. 382, 58 Am. St. Rep. 638, 38 S. W. 85, 35 L. R. A. 227; *Lake Shore etc. Ry. Co. v. Smith*, 173 U. S. 690, 19 S. Ct. 565, 43 L. ed. 858; *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521; *Hawley v. Hurd*, 72 Vt. 122, 82 Am. St. Rep. 922, 47 Atl. 401, 52 L. R. A. 195; *Woodward v. Commonwealth*, 9 Ky. Law Rep. 670, 7 S. W. 613.

⁹⁶ *Railroad Co. v. Koontz*, 104 U. S. 11, 26 L. ed. 643.

⁹⁷ *Fritts v. Palmer*, 132 U. S. 288, 10 S. Ct. 93, 33 L. ed. 317; *Allgeyer v. Louisiana*, 165 U. S. 583, 17 S. Ct. 427, 41 L. ed. 832; *Dayton Coal etc. Co. v. Barton*, 183 U. S. 24, 22 S. Ct. 5, 46 L. ed. 61; *Insurance Co. v. City of New Orleans*, 1 Woods, 85, Fed. Cas. No. 7052.

⁹⁸ *Horn Silver Min. Co. v. New York*, 143 U. S. 314, 12 S. Ct. 403, 36 L. ed. 164; *Ducat v. Chicago*, 10 Wall. 415, 19 L. ed. 972.

⁹⁹ *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 45, 20 S. Ct. 518, 44 L. ed. 657.

¹⁰⁰ *Hallinger v. Davis*, 146 U. S. 320, 13 S. Ct. 105, 36 L. ed. 986; *State v. Bradley*, 26 Fed. 289; *Scott v. Toledo*, 36 Fed. 385, 1 L. R. A. 688; *Ex parte Ulrich*, 42 Fed. 587; *State v. Boswell*, 104 Ind. 541, 4 N. E. 675.

¹⁰¹ *United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588.

¹⁰² *In re Kemmler*, 136 U. S. 448, 10 S. Ct. 930, 34 L. ed. 519; *In re Converse*, 137 U. S. 632, 11 S. Ct. 193, 34 L. ed. 796; *Marchant v.*

*For general discussion of subject, see, ante, p. 641 et seq.

herent and reserved powers of the state, exerted within the limits of the fundamental principles of liberty and justice underlying our civil and political institutions.¹⁰³ What is due process of law in the respective states is regulated and determined by the law of each state,¹⁰⁴ and this amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted, or legal obligations enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords a fair opportunity to be heard before the issues are decided.¹⁰⁵ The courts will interfere with state action, on the ground that it is repugnant to this clause, only where fundamental rights have been denied.¹⁰⁶

— Life and Liberty.*

The Fourteenth Amendment does not limit the power of the states to deal with crimes, but merely prevents particular persons or classes from being deprived of equal and impartial justice under the law,¹⁰⁷ and where proceedings are conducted in the ordinary forms of criminal prosecutions in the state there is no denial of due process of law.¹⁰⁸ Accordingly the prosecution of offenses by information instead of by indictment cannot

Pennsylvania R. R. Co., 153 U. S. 388, 14 S. Ct. 897, 38 L. ed. 751; *Broadfoot v. Fayetteville*, 121 N. C. 422, 61 Am. St. Rep. 670, 28 S. E. 516, 39 L. R. A. 245; *Bittenhaus v. Johnston*, 92 Wis. 595, 66 N. W. 806, 32 L. R. A. 380.

¹⁰³ *Hurtado v. California*, 110 U. S. 535, 4 S. Ct. 111, 292, 28 L. ed. 232; *Hagar v. Reclamation District*, 111 U. S. 708, 4 S. Ct. 663, 28 L. ed. 569.

¹⁰⁴ *Walker v. Sauvinet*, 93 U. S. 93, 23 L. ed. 678.

¹⁰⁵ *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 393, 16 S. Ct. 344, 40 L. ed. 467; *Brown v. New Jersey*, 175 U. S. 175, 20 S. Ct. 73, 44 L. ed. 119; *Storti v. Massachusetts*, 183 U. S. 138, 22 S. Ct. 72, 46 L. ed. 120.

¹⁰⁶ *Allen v. Georgia*, 166 U. S. 141, 17 S. Ct. 525, 41 L. ed. 949.

¹⁰⁷ *Caldwell v. Texas*, 137 U. S. 697, 11 S. Ct. 224, 34 L. ed. 816.

¹⁰⁸ *Miller v. Texas*, 153 U. S. 539, 14 S. Ct. 874, 38 L. ed. 812; *Bergemann v. Backer*, 157 U. S. 668, 15 S. Ct. 727, 39 L. ed. 845; *Minder v. Georgia*, 183 U. S. 559, 22 S. Ct. 224, 46 L. ed. 328.

*For definitions of these terms, see, ante, pp. 646, 647.

be said to deprive of life or liberty without due process of law.¹⁰⁹ Nor is an accused person who has been regularly indicted deprived of due process of law because of mere irregularities in the manner in which he is brought into the custody of the law.¹¹⁰ This amendment does not restrict the power of the legislature to limit, change or vary existing rules of evidence;¹¹¹ so a provision in a statute that in a prosecution for keeping a place for the unlawful manufacture of intoxicating liquors without a permit the state need not prove that the defendant had no permit, is not void as depriving him of the presumption of innocence;¹¹² nor is a law which merely makes a fact *prima facie* evidence of crime.¹¹³

A statute providing that a defendant waives the illegality of a service of process by appearing to challenge the jurisdiction does not deprive him of liberty without due process,¹¹⁴ nor is a person deprived of any constitutional right by being tried by a judge, who, although appointed without authority, has been declared by the highest state court to be a judge *de facto* of a court *de jure*.¹¹⁵ The determination of a state legislature that electrocution is not a cruel and unusual punishment, and a decision of a state court sustaining that determination, do not deprive an accused person of due process of law.¹¹⁶ An appellate court's affirmance of a death sentence in the absence of the accused is not repugnant to this amendment.¹¹⁷ It is

109 *Hurtado v. California*, 110 U. S. 538, 4 S. Ct. 111, 292, 28 L. ed. 232; *McNulty v. California*, 149 U. S. 648, 13 S. Ct. 959, 37 L. ed. 882; *Hodgson v. Vermont*, 168 U. S. 272, 18 S. Ct. 80, 42 L. ed. 461; *Brown v. New Jersey*, 175 U. S. 175, 20 S. Ct. 78, 44 L. ed. 119; *Bolln v. Nebraska*, 176 U. S. 86, 20 S. Ct. 287, 44 L. ed. 382; *Davis v. Burke*, 179 U. S. 404, 21 S. Ct. 210, 45 L. ed. 249; *In re Wright*, 3 Wyo. 478, 31 Am. St. Rep. 94, 27 Pac. 565, 13 L. R. A. 748.

110 *Ker v. Illinois*, 110 U. S. 440, 7 S. Ct. 225, 30 L. ed. 421.

111 *People v. Turner*, 117 N. Y. 227, 15 Am. St. Rep. 498, 22 N. E. 1022.

112 *Mugler v. Kansas*, 123 U. S. 674, 8 S. Ct. 273, 31 L. ed. 205.

113 *Board of Commissioners v. Merchant*, 103 N. Y. 143, 57 Am. Rep. 705.

114 *York v. Texas*, 137 U. S. 21, 11 S. Ct. 9, 34 L. ed. 604.

115 *In re Manning*, 139 U. S. 506, 11 S. Ct. 624, 35 L. ed. 264.

116 *In re Kemmler*, 136 U. S. 449, 10 S. Ct. 930, 34 L. ed. 519.

117 *Schwab v. Berggren*, 143 U. S. 450, 12 S. Ct. 525, 36 L. ed. 218.

competent for the state legislature to provide that the governor shall appoint a day for the execution of a sentence of death;¹¹⁸ but a statute purporting to give to the board of managers of a reformatory power to determine whether a prisoner should not have been sent to the penitentiary and to transfer him in accordance with that determination, denies due process of law and is void.¹¹⁹

An appeal to a higher court from a judgment of conviction is not a matter of right, but may be accorded by a state to a person convicted on such terms as it may think proper.¹²⁰ And where a criminal under sentence escapes after a writ of error has been sued out, the supreme court does not deny due process of law in dismissing the writ.¹²¹ The refusal of a state court to amend the record so as to show that the accused was not present in person or by counsel at the affirmance of judgment by that court does not deprive the accused of due process.¹²² So also as to the refusal of a state court to review the question whether the officers in charge of a jury were sworn.¹²³

A valid proceeding to commit a person as insane requires notice and an opportunity to be heard before judgment; there must be a trial and an opportunity to produce witnesses and evidence,¹²⁴ and a statute under which a person may be committed to and confined in a hospital for the insane, without giving him any notice of the proceeding against him, and au-

¹¹⁸ *Holden v. Minnesota*, 137 U. S. 495, 11 S. Ct. 143, 34 L. ed. 734. See, also, *Dreyer v. Illinois*, 187 U. S. 71, 23 S. Ct. 28, 47 L. ed. 797.

¹¹⁹ *People v. Mallary*, 195 Ill. 582, 88 Am. St. Rep. 212, 63 N. E. 508.

¹²⁰ *Kane v. Durston*, 153 U. S. 687, 14 S. Ct. 913, 38 L. ed. 867; *Andrews v. Swartz*, 156 U. S. 275, 15 S. Ct. 389, 39 L. ed. 422; *Kohl v. Lehlbach*, 160 U. S. 297, 16 S. Ct. 304, 40 L. ed. 432; *Murphy v. Massachusetts*, 177 U. S. 158, 20 S. Ct. 639, 44 L. ed. 711.

¹²¹ *Allen v. Georgia*, 166 U. S. 141, 17 S. Ct. 525, 41 L. ed. 949.

¹²² *Fielden v. Illinois*, 143 U. S. 456, 12 S. Ct. 528, 36 L. ed. 224.

¹²³ *Dryer v. Illinois*, 187 U. S. 71, 23 S. Ct. 28, 47 L. ed. 79.

¹²⁴ *State v. Billings*, 55 Minn. 467, 43 Am. St. Rep. 525, 57 N. W. 206, 794. But see *Dowdell, Petitioner*, 169 Mass. 387, 67 Am. St. Rep. 1033, 47 N. E. 1033.

thorizing a judge to commit him upon a certificate of medical examiners, is unconstitutional.¹²⁵ But a person is not deprived of due process of law by being adjudged insane in a proceeding in which he was duly served, because the sheriff, acting on the advice of a physician, did not produce him in court.¹²⁶ After a regular trial and conviction for a crime, if a suggestion of then existing insanity is made, in order to constitute due process it is not necessary to try the question by a jury.¹²⁷

— Property.*

The phrase "life, liberty and property" includes the right of each individual to be free in the enjoyment of his faculties,¹²⁸ and the natural right to labor and to enjoy the fruits of labor includes the right to contract with reference to that labor.¹²⁹ The right to contract necessarily includes the right to fix the price at which labor shall be performed and the mode and time of payment, and a statute restricting a person as to either of these elements to a mode different from that enjoyed by the community at large is in conflict with this clause.¹³⁰ A statute providing for the weighing of coal at the mines is unconstitutional so far as it declares null and void all contracts in

¹²⁵ *In re Lambert*, 134 Cal. 626, 86 Am. St. Rep. 296, 66 Pac. 851, 55 L. R. A. 856; *Doyle*, Petitioner, 16 R. I. 537, 27 Am. St. Rep. 759, 18 Atl. 159.

¹²⁶ *Simon v. Craft*, 182 U. S. 436, 21 S. Ct. 836, 45 L. ed. 1165.

¹²⁷ *Nobles v. Georgia*, 168 U. S. 405, 18 S. Ct. 87, 42 L. ed. 515.

¹²⁸ *State v. Dalton*, 22 R. I. 77, 84 Am. St. Rep. 818, 46 Atl. 234, 48 L. R. A. 775.

¹²⁹ *Gillespie v. People*, 188 Ill. 176, 80 Am. St. Rep. 176, 58 N. E. 1007, 52 L. R. A. 283; *State v. Julow*, 129 Mo. 163, 50 Am. St. Rep. 443, 31 S. W. 781, 29 L. R. A. 257; *State v. Gardner*, 58 Ohio St. 599, 65 Am. St. Rep. 785, 51 N. E. 36, 41 L. R. A. 689.

¹³⁰ *Low v. Rees Printing Co.*, 41 Neb. 127, 43 Am. St. Rep. 670, 59 N. W. 362, 24 L. R. A. 702; *Ritchie v. People*, 155 Ill. 98, 46 Am. St. Rep. 315, 40 N. E. 454, 29 L. R. A. 79; *In re Morgan*, 26 Colo. 415, 77 Am. St. Rep. 269, 58 Pac. 1071, 47 L. R. A. 52; *Seattle v. Smyth*, 22 Wash. 237, 79 Am. St. Rep. 939, 60 Pac. 1120; *Cleveland v. Clements Bros. etc. Co.*, 67 Ohio St. 197, 93 Am. St. Rep. 670, 65 N. E. 885, 59 L. R. A. 775; *Harding v. People*, 160 Ill. 459, 52 Am. St. Rep. 344, 43 N. E. 624; *People v. Coler*, 166 N. Y. 1, 82 Am. St. Rep. 605, 59 N. E. 716, 52 L. R. A. 814.

*For discussion of the principles of eminent domain as exercised by state and federal governments, see ante, p. 650 et seq.

which such weighing is dispensed with,¹³¹ and this is true of a statute making it unlawful for the owner, operator or lessee of a mine to screen coal before weighing,¹³² or of a statute prohibiting persons engaged in mining from issuing scrip to their employees, or from selling merchandise or supplies to employees at a higher rate than the cash price.¹³³ A statute declaring it to be criminal for an employer to attempt to prevent his employees from joining labor unions is void for the same reason;¹³⁴ as also is a statute prohibiting the employment of alien laborers;¹³⁵ or a statute creating a free employment bureau and forbidding the furnishing of lists to employers whose employees are on strike.¹³⁶

While the legislature may deny the right to contract to those who are incapable of binding themselves by contract, and may prohibit the making of contracts when it becomes necessary to protect the rights of others,¹³⁷ yet the power in this respect is always based upon some condition and not upon absolute right; the contracts in question must be affected by some public interest, or a duty to society or government.¹³⁸

Any restriction or interruption of the common or necessary use of property that destroys its value or strips it of its attributes is contrary to this amendment,¹³⁹ but appropriate reg-

¹³¹ *Millett v. People*, 117 Ill. 294, 57 Am. Rep. 869, 7 N. E. 631.

¹³² *In re Preston*, 63 Ohio St. 428, 81 Am. St. Rep. 642, 59 N. E. 101, 52 L. R. A. 523.

¹³³ *State v. Goodwill*, 33 W. Va. 179, 25 Am. St. Rep. 863, 10 S. E. 285, 6 L. R. A. 621; *State v. Fire Creek etc. Co.*, 33 W. Va. 188, 25 Am. St. Rep. 891, 10 S. E. 288, 6 L. R. A. 359.

¹³⁴ *Gillespie v. People*, 188 Ill. 176, 80 Am. St. Rep. 176, 58 N. E. 1007, 52 L. R. A. 283.

¹³⁵ *Ex parte Kuback*, 85 Cal. 274, 20 Am. St. Rep. 226, 24 Pac. 737; *Juniata Limestone Co. v. Fagley*, 187 Pa. St. 193, 67 Am. St. Rep. 579, 40 Atl. 977.

¹³⁶ *Matthews v. People*, 202 Ill. 389, 95 Am. St. Rep. 241, 67 N. E. 28.

¹³⁷ *Leep v. St. Louis etc. Ry. Co.*, 58 Ark. 407, 41 Am. St. Rep. 109, 25 S. W. 75, 23 L. R. A. 264.

¹³⁸ *Low v. Rees Printing Co.*, 41 Neb. 127, 43 Am. St. Rep. 670, 59 N. W. 362, 24 L. R. A. 702; *Leep v. St. Louis etc. Ry. Co.*, 58 Ark. 407, 41 Am. St. Rep. 109, 25 S. W. 75, 23 L. R. A. 264.

¹³⁹ *Janesville v. Carpenter*, 77 Wis. 288, 20 Am. St. Rep. 123, 46

ulation of the use of property is not a taking of property without due process of law,¹⁴⁰ and legislation is not open to objection if it be general in its operation on the subjects to which it relates and is enforceable in the usual mode by process or proceedings applicable to the nature of the case.¹⁴¹

The levy of a tax, however great the hardship or unjust the burden, is not a taking of property without due process of law.¹⁴² Taxation proceedings are not necessarily judicial, and due process of law, as applied to that subject, does not imply the right to such notice and hearing as are essential to the validity of judicial proceedings,¹⁴³ and whenever, by state authority, a charge is imposed upon property for public use, and a mode provided to adjudicate the charge in the courts after notice and a hearing of a contest, a judgment is due process of law, however obnoxious for other reasons.¹⁴⁴ It is not necessary that a property owner shall have notice of every step in the proceedings for assessment, if he have opportunity to be heard as to its ultimate validity.¹⁴⁵

The manner of notice and the specific period of time in the proceedings when a property owner may be heard are not material if reasonable opportunity be afforded to contest.¹⁴⁶

N. W. 128, 8 L. R. A. 808; *People v. Hawkins*, 157 N. Y. 1, 68 Am. St. Rep. 736, 51 N. E. 257, 42 L. R. A. 490.

¹⁴⁰ *Munn v. Illinois*, 94 U. S. 125, 24 L. ed. 77; *Railroad Co. v. Richmond*, 96 U. S. 529, 24 L. ed. 734.

¹⁴¹ *Dent v. West Virginia*, 129 U. S. 124, 9 S. Ct. 231, 32 L. ed. 623.

¹⁴² *Forsythe v. City of Hammond*, 68 Fed. 774.

¹⁴³ *Kentucky Railroad Tax Cases*, 115 U. S. 331, 6 S. Ct. 57, 29 L. ed. 414; *McMillen v. Anderson*, 95 U. S. 41, 24 L. ed. 335.

¹⁴⁴ *Davidson v. New Orleans*, 96 U. S. 104, 24 L. ed. 616; *Lent v. Tillson*, 140 U. S. 327, 11 S. Ct. 825, 35 L. ed. 419; *Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 163, 17 S. Ct. 56, 41 L. ed. 369.

¹⁴⁵ *Gallup v. Schmidt*, 183 U. S. 307, 22 S. Ct. 162, 46 L. ed. 207; *Bauman v. Ross*, 167 U. S. 590, 17 S. Ct. 966, 42 L. ed. 270; *Voigt v. Detroit*, 184 U. S. 122, 22 S. Ct. 337, 46 L. ed. 459.

¹⁴⁶ *King v. Portland*, 184 U. S. 70, 22 S. Ct. 290, 46 L. ed. 431; *Pittsburgh etc. Ry. Co. v. Backus*, 154 U. S. 421, 14 S. Ct. 1114, 38 L. ed. 1031; *Glidden v. Harrington*, 189 U. S. 255, 23 S. Ct. 574, 47 L. ed. 798; *Sanford v. Poe*, 69 Fed. 546; *McLeod v. Receveur*, 71 Fed.

But assessors, in determining the value of property for taxation, act judicially, and notice and opportunity to contest such determination are essential to due process;¹⁴⁷ and where an assessment is arbitrary, and without an opportunity for hearing, the proceeding is unconstitutional.¹⁴⁸ The fact that a statute provides that no review of an assessment can be had until court proceedings for the collection of the tax does not make the tax obnoxious to this amendment.¹⁴⁹ A law authorizing the governor to appoint a board to reassess property which has been grossly undervalued does not violate this amendment in not providing for a hearing before the governor, if a hearing may be had before the board.¹⁵⁰

The method of collecting taxes in vogue, although not judicial in its nature, affords due process of law,¹⁵¹ and summary remedies used in the collection of taxes may be due process of law, although they could not be applied to cases of a judicial character.¹⁵² The commitment of the person of a taxpayer after other means of collection have failed is not violative of the Fourteenth Amendment,¹⁵³ nor is a state law trebling taxation as a penalty for fraud.¹⁵⁴

455; *In re McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; *People v. Turner*, 117 N. Y. 227, 15 Am. St. Rep. 498, 22 N. E. 1022.

¹⁴⁷ *Hagar v. Reclamation District*, 111 U. S. 710, 4 S. Ct. 663, 28 L. ed. 569, affirming 6 Saw. 567, 4 Fed. 366; *Winona etc. Land Co. v. Minnesota*, 159 U. S. 537, 16 S. Ct. 83, 40 L. ed. 247.

¹⁴⁸ *Railroad Tax Cases*, 13 Fed. 722; *San Francisco etc. Ry. Co. v. Dinwiddie*, 8 Saw. 312, 13 Fed. 739; *Burns v. Multnomah Ry. Co.*, 8 Saw. 543, 15 Fed. 177; *Auer v. City of Dubuque*, 65 Iowa, 650, 22 N. W. 914.

¹⁴⁹ *Winona etc. Land Co. v. Minnesota*, 159 U. S. 538, 16 S. Ct. 83, 40 L. ed. 247.

¹⁵⁰ *Weyerhaeuser v. Minnesota*, 176 U. S. 555, 20 S. Ct. 485, 44 L. ed. 583.

¹⁵¹ *Kelly v. Pittsburgh*, 104 U. S. 80, 26 L. ed. 658.

¹⁵² *King v. Mullins*, 171 U. S. 429, 18 S. Ct. 925, 43 L. ed. 214; *King v. Panther Lumber Co.*, 171 U. S. 438, 18 S. Ct. 573, 43 L. ed. 227.

¹⁵³ *Palmer v. McMahon*, 133 U. S. 670, 10 S. Ct. 324, 33 L. ed. 772.

¹⁵⁴ *State v. Moss*, 69 Mo. 496.

— Police Regulations as Denying Due Process.*

The prohibition against deprivation of life, liberty or property without due process of law does not restrict the power of the states to enact regulations respecting the public health and safety.¹⁵⁵ For the public good, individuals must suffer the destruction of property or even life, rights of necessity being part of the law,¹⁵⁶ and the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority essential to the safety, health, peace, good order and morals of the community.¹⁵⁷ But laws enacted in the purported exercise of the police power must be police regulations in fact;¹⁵⁸ rights of persons and property cannot be invaded under the guise of police regulations for the protection of health or good order, when it is manifest that such is not the object and purpose of the regulation.¹⁵⁹

The legislature cannot arbitrarily make that a subject of the police power which, from its nature, is not so;¹⁶⁰ nor declare a thing to be a nuisance without regard to whether it is so or

¹⁵⁵ *Compagnie Francaise v. Louisiana State Board*, 186 U. S. 393, 22 S. Ct. 811, 46 L. ed. 1209.

¹⁵⁶ *Bowditch v. Boston*, 101 U. S. 18, 25 L. ed. 980.

¹⁵⁷ *Crowley v. Christensen*, 137 U. S. 89, 11 S. Ct. 13, 34 L. ed. 620.

¹⁵⁸ *In re Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636; *Health Department v. Rector*, 145 N. Y. 32, 45 Am. St. Rep. 579, 39 N. E. 833; *Ex parte Brown*, 38 Tex. Cr. 295, 70 Am. St. Rep. 743; *People v. Warden*, 157 N. Y. 116, 68 Am. St. Rep. 763, 51 N. E. 1006; *Chicago v. Netcher*, 183 Ill. 104, 75 Am. St. Rep. 93, 55 N. E. 707, 48 L. R. A. 261; *State ex rel. v. Ashbrook*, 154 Mo. 375, 77 Am. St. Rep. 765, 55 S. W. 627, 48 L. R. A. 265.

¹⁵⁹ *In re Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636; *Bailey v. People*, 190 Ill. 28, 83 Am. St. Rep. 116, 60 N. E. 98, 54 L. R. A. 838; *Chaddock v. Day*, 75 Mich. 527, 13 Am. St. Rep. 468, 42 N. W. 977, 4 L. R. A. 809.

¹⁶⁰ *Jacksonville v. Ledwith*, 26 Fla. 163, 23 Am. St. Rep. 558, 7 South. 85, 9 L. R. A. 69; *People v. Gillson*, 109 N. Y. 389, 4 Am. St. Rep. 465, 17 N. E. 343.

*Effect of amendment on police power in general: See, ante, p. 698.

not.¹⁶¹ And a statute which is primarily one for raising revenue cannot be referred to the police power.¹⁶² But previous notice and opportunity to be heard is not indispensable to the valid exercise of a state's police power; it is enough that persons affected thereby are enabled, in maintaining their rights, to invoke the protection of the law by any appropriate process.¹⁶³

The regulation of trade, business, or profession is within the domain of the police power; such regulation may more or less restrict liberty or impair the value of property, but if reasonably calculated to produce the end contemplated is constitutional.¹⁶⁴ Such laws must, however, in all their requirements, operate equally upon all engaged in the particular business.¹⁶⁵

Statutes regulating or prohibiting the manufacture or sale of certain commodities do not deprive of due process of law,¹⁶⁶ unless they are arbitrary or unreasonable.¹⁶⁷

¹⁶¹ *Ex parte Neill*, 32 Tex. Cr. 275, 40 Am. St. Rep. 776, 22 S. W. 923; *Harmison v. Lewistown*, 153 Ill. 313, 46 Am. St. Rep. 893, 33 N. E. 628.

¹⁶² *Village of Lemont v. Jenks*, 197 Ill. 363, 90 Am. St. Rep. 172, 64 N. E. 362.

¹⁶³ *Chicago etc. R. R. v. State*, 47 Neb. 549, 53 Am. St. Rep. 557, 66 N. W. 624, 41 L. R. A. 481.

¹⁶⁴ *Soon Hing v. Crowley*, 113 U. S. 708, 5 S. Ct. 730, 28 L. ed. 1145; *Gundling v. Chicago*, 177 U. S. 188, 20 S. Ct. 633, 44 L. ed. 725; *Nutting v. Massachusetts*, 183 U. S. 553, 22 S. Ct. 238, 46 L. ed. 324; *Munn v. People*, 69 Ill. 80; *St. Joseph v. Levin*, 128 Mo. 583, 49 Am. St. Rep. 577, 31 S. W. 101; *Grand Rapids v. Brandy*, 105 Mich. 670, 55 Am. St. Rep. 472, 64 N. W. 29, 32 L. R. A. 116; *State v. Snowman*, 94 Me. 99, 80 Am. St. Rep. 380, 46 Atl. 815, 50 L. R. A. 544; *Price v. People*, 193 Ill. 114, 86 Am. St. Rep. 306, 61 N. E. 844, 55 L. R. A. 588; *State v. Randolph*, 23 Or. 74, 37 Am. St. Rep. 655, 31 Pac. 201, 17 L. R. A. 470; *State v. Taft*, 118 N. C. 1190, 54 Am. St. Rep. 768, 23 S. E. 970, 32 L. R. A. 122.

¹⁶⁵ *Los Angeles County v. Hollywood etc. Assn.*, 124 Cal. 344, 71 Am. St. Rep. 75, 57 Pac. 153; *State v. Gardner*, 58 Ohio St. 599, 65 Am. St. Rep. 785, 51 N. E. 136, 41 L. R. A. 689.

¹⁶⁶ *Beer Co. v. Massachusetts*, 97 U. S. 25, 24 L. ed. 989; *Bartemeyer v. Iowa*, 18 Wall. 129, 21 L. ed. 929; *Mugler v. Kansas*, 123

¹⁶⁷ *People v. Berrien Circuit Judge*, 124 Mich. 664, 83 Am. St. Rep. 352, 83 N. W. 594; *State v. Layton*, 160 Mo. 474, 83 Am. St. Rep.

Statutes requiring persons to submit to examination and to pay a license fee before engaging in certain professions or trades are valid.¹⁶⁸ The imposition of licenses and privilege taxes does not deprive of property without due process of law.¹⁶⁹

The regulation of railroads and other corporations engaged in the public service is a part of the police power.¹⁷⁰ So the legislature may prescribe the maximum rates to be charged by

U. S. 623, 8 S. Ct. 273, 31 L. ed. 205; affirming 29 Kan. 252, 44 Am. Rep. 634; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 22 S. Ct. 120, 46 L. ed. 171; *Ex parte Campbell*, 74 Cal. 20, 5 Am. St. Rep. 418, 15 Pac. 318; *Ex parte Yung Jon*, 28 Fed. 308; *Davis v. State*, 68 Ala. 58, 44 Am. Rep. 128; *New Orleans v. Faber*, 105 La. 208, 83 Am. St. Rep. 232, 29 South. 507, 53 L. R. A. 165; *State v. Wagener*, 69 Minn. 206, 65 Am. St. Rep. 565, 72 N. W. 67, 38 L. R. A. 677; *Portland v. Meyer*, 32 Or. 368, 67 Am. St. Rep. 538, 53 Pac. 21.

487, 61 S. W. 171; *People v. Bilsecker*, 169 N. Y. 53, 88 Am. St. Rep. 534, 61 N. E. 990, 57 L. R. A. 178; *Helena v. Dwyer*, 64 Ark. 424, 62 Am. St. Rep. 206, 42 S. W. 1071, 39 L. R. A. 266; *State v. Dalton*, 22 R. I. 77, 84 Am. St. Rep. 818, 46 Atl. 234, 48 L. R. A. 775.

¹⁶⁸ *Dent v. West Virginia*, 129 U. S. 124, 9 S. Ct. 231, 32 L. ed. 623; *Reetz v. Michigan*, 188 U. S. 505, 23 S. Ct. 390, 47 L. ed. 563; *Ex parte Frazer*, 54 Cal. 94; *Ex parte McNulty*, 77 Cal. 164, 11 Am. St. Rep. 257, 19 Pac. 237; *Orr v. Meek*, 111 Ind. 40, 11 N. E. 787; *Eastman v. State*, 109 Ind. 278, 58 Am. Rep. 400, 10 N. E. 97; *Wilkins v. State*, 113 Ind. 514, 16 N. E. 192; *State v. State Medical etc. Board*, 32 Minn. 324, 50 Am. Rep. 575, 20 N. W. 238; *People v. Warden*, 144 N. Y. 529, 39 N. E. 686, 27 L. R. A. 718; *State v. Gardner*, 58 Ohio St. 599, 65 Am. St. Rep. 785, 51 N. E. 136, 41 L. R. A. 689; *State v. Zeno*, 79 Minn. 80, 79 Am. St. Rep. 422, 81 N. W. 748, 48 L. R. A. 88.

¹⁶⁹ *Thurlow v. Massachusetts (License Cases)*, 5 How. 504, 12 L. ed. 256; *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77; *Gray v. Connecticut*, 159 U. S. 74, 15 S. Ct. 985, 40 L. ed. 80, affirming 61 Conn. 89, 22 Atl. 675; *Commonwealth v. Fowler*, 98 Ky. 648, 34 S. W. 21.

¹⁷⁰ *Railroad Co. v. Maryland*, 21 Wall. 472, 22 L. ed. 678; *Munn v. Illinois*, 94 U. S. 126, 24 L. ed. 77; *Chicago etc. R. R. Co. v. Iowa*, 94 U. S. 161, 24 L. ed. 94; *Budd v. New York*, 143 U. S. 547, 12 S. Ct. 477, 36 L. ed. 247, affirming 117 N. Y. 18, 15 Am. St. Rep. 472, 22 N. E. 676; *Detroit etc. Ry. Co. v. Osborn*, 189 U. S. 383, 23 S. Ct. 540, 47 L. ed. 860.

warehouses,¹⁷¹ railroad companies,¹⁷² telephone and telegraph companies,¹⁷³ steam grist-mills,¹⁷⁴ gas and electric light companies,¹⁷⁵ and water companies.¹⁷⁶

But this power to regulate rates must be reasonably exercised; it cannot extend to the confiscation of property.¹⁷⁷ The establishment of a rate which barely allows a carrier to pay operating expenses and fixed charges, or a statute which requires

¹⁷¹ *Munn v. Illinois*, 94 U. S. 126, 24 L. ed. 77; *Budd v. New York*, 143 U. S. 547, 12 S. Ct. 477, 36 L. ed. 247; *Brass v. North Dakota*, 153 U. S. 399, 14 S. Ct. 960, 38 L. ed. 757; *Belcher v. St. Louis Grain Elevator*, 101 Mo. 192, 13 S. W. 822, 8 L. R. A. 801; *Vega S. S. Co. v. Consolidated Elevator Co.*, 56 Minn. 108, 57 N. W. 331, 43 L. R. A. 843.

¹⁷² *Chicago etc. R. R. Co. v. Iowa*, 94 U. S. 155, 24 L. ed. 91; *Georgia R. R. etc. Co. v. Smith*, 128 U. S. 180, 9 S. Ct. 47, 32 L. ed. 377; *Ruggles v. Illinois*, 108 U. S. 531, 12 S. Ct. 836, 27 L. ed. 812; *Chicago etc. R. R. Co. v. Minnesota*, 134 U. S. 461, 10 S. Ct. 703, 33 L. ed. 970; *Lake Shore Ry. Co. v. Smith*, 173 U. S. 696, 19 S. Ct. 570, 43 L. ed. 858; *Jacobson v. Wisconsin etc. R. R. Co.*, 71 Minn. 528, 70 Am. St. Rep. 361, 74 N. W. 894, 40 L. R. A. 389; *Chicago etc. R. R. Co. v. Jones*, 149 Ill. 377, 41 Am. St. Rep. 385, 37 N. E. 251, 24 L. R. A. 141.

¹⁷³ *State v. Telegraph Co.*, 47 Fed. 633; *Missouri v. Telegraph Co.*, 23 Fed. 539; *Western Union Tel. Co. v. Pendleton*, 95 Ind. 12, 48 Am. Rep. 692; *Central etc. Tel. Co. v. State*, 118 Ind. 194, 10 Am. St. Rep. 114, 19 N. E. 604; *Chesapeake etc. Tel. Co. v. Manning*, 186 U. S. 247, 22 S. Ct. 881, 46 L. ed. 1144.

¹⁷⁴ *Burlington v. Beasley*, 94 U. S. 314, 24 L. ed. 761; *State v. Edwards*, 86 Me. 105, 41 Am. St. Rep. 530, 29 Atl. 948, 25 L. R. A. 504.

¹⁷⁵ *State v. Gas Co.*, 34 Ohio St. 572, 32 Am. Rep. 390; *Zanesville v. Gas Co.*, 47 Ohio St. 1, 23 N. E. 55; *Rushville v. Gas Co.*, 132 Ind. 575, 28 N. E. 853, 15 L. R. A. 321; *In re Pryor*, 55 Kan. 730, 49 Am. St. Rep. 284, 41 Pac. 960, 29 L. R. A. 398; *Cincinnati etc. R. R. v. Bowling Green*, 57 Ohio St. 345, 49 N. E. 123, 41 L. R. A. 423; *Missouri ex rel. Laclede Gaslight Co. v. Murphy*, 170 U. S. 97, 18 S. Ct. 505, 42 L. ed. 955.

¹⁷⁶ *Spring Valley Waterworks v. Schottler*, 110 U. S. 353, 4 S. Ct. 48, 28 L. ed. 173; *Spring Valley v. Bartlett*, 8 Saw. 579, 16 Fed. 639; *Spring Valley Waterworks v. San Francisco*, 82 Cal. 286, 16 Am. St. Rep. 116, 22 Pac. 910, 6 L. R. A. 756.

¹⁷⁷ *Stone v. Farmers' etc. Trust Co.*, 116 U. S. 331, 6 S. Ct. 334, 29 L. ed. 636; *Dow v. Beidelman*, 125 U. S. 689, 8 S. Ct. 1028, 31 L. ed. 841.

that certain persons shall be carried free of charge, as effectually deprives of property as a requirement that a plant be operated at a loss.¹⁷⁸

Laws reasonably calculated to secure the safety and convenience of the public, and of employees of persons and corporations engaged in dangerous pursuits, do not deprive of property without due process of law. Of this character are laws requiring railroads to fence their tracks and making them liable in treble damages for injuries in case of failure to do so;¹⁷⁹ declaring that in all actions against railways for injuries to stock the fact that tracks were not fenced is prima facie evidence of liability;¹⁸⁰ requiring railroads to pay fees for the examination of employees as to their fitness;¹⁸¹ making railroads liable for fires caused by their locomotives;¹⁸² making railroads liable for injuries to passengers or employees caused by negligence;¹⁸³ requiring street railway companies to pro-

178 *Smyth v. Ames*, 169 U. S. 466, 18 S. Ct. 418, 42 L. ed. 819; *St. Louis etc. Ry. Co. v. Gill*, 156 U. S. 649, 15 S. Ct. 485, 39 L. ed. 567; *Lake Shore etc. Ry. Co. v. Smith*, 173 U. S. 696, 19 S. Ct. 570, 43 L. ed. 858; *Georgia R. R. etc. Co. v. Smith*, 128 U. S. 179, 9 S. Ct. 47, 32 L. ed. 377; *San Diego Water Co. v. San Diego*, 118 Cal. 556, 62 Am. St. Rep. 261, 50 Pac. 633, 38 L. R. A. 460; *Atchison etc. Ry. Co. v. Campbell*, 61 Kan. 439, 78 Am. St. Rep. 328, 59 Pac. 1051, 48 L. R. A. 251.

179 *Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 523, 6 S. Ct. 110, 29 L. ed. 463, affirming 82 Mo. 221, 52 Am. Rep. 369; *Minneapolis etc. Ry. Co. v. Emmons*, 149 U. S. 364, 13 S. Ct. 870, 37 L. ed. 769; *Davis Coal Co. v. Pollard*, 158 Ind. 607, 92 Am. St. Rep. 319, 62 N. E. 492; *Barnet v. Atlantic & Pacific Ry.*, 68 Mo. 56, 30 Am. Rep. 773; *Little Rock etc. Ry. v. Payne*, 33 Ark. 816, 34 Am. Rep. 55.

180 *Joliffe v. Brown*, 14 Wash. 155, 53 Am. St. Rep. 868, 44 Pac. 149.

181 *Nashville etc. Ry. Co. v. Alabama*, 128 U. S. 101, 9 S. Ct. 28, 32 L. ed. 352; *Louisville etc. Ry. Co. v. Baldwin*, 85 Ala. 619, 5 South. 311.

182 *Union Pacific Ry. Co. v. De Busk*, 12 Colo. 294, 13 Am. St. Rep. 221, 20 Pac. 752, 3 L. R. A. 350; *Stearns v. Atlantic etc. Ry. Co.*, 46 Me. 95; *Campbell v. Missouri Pacific Ry. Co.*, 121 Mo. 340, 25 S. W. 936, 25 L. R. A. 175; *Mobile Ins. Co. v. Columbia etc. R. Co.*, 41 S. C. 408, 44 Am. St. Rep. 725, 19 S. E. 858.

183 *Missouri Pacific Ry. Co. v. Mackey*, 127 U. S. 205, 9 S. Ct. 1161, 32 L. ed. 107; *Union Pacific Ry. Co. v. Porter*, 38 Neb. 226, 56 N. W. 808.

vide both driver and conductor for each car;¹⁸⁴ requiring railway companies to report quarterly the number of passengers carried;¹⁸⁵ prohibiting the waste of natural gas or oil.¹⁸⁶

Statutes regulating the hours of employment and requiring precautions to prevent the injury of employees in underground mines and in smelters and refineries are in the same category.¹⁸⁷ A statute making railroads absolutely liable for stock killed and fixing a schedule of arbitrary values, regardless of the question of negligence or actual value, contravenes this amendment and is void.¹⁸⁸

Sunday laws are a legitimate exercise of the police power, and do not deprive of liberty or property without due process of law,¹⁸⁹ unless they discriminate arbitrarily between certain persons or classes of persons.¹⁹⁰

The enactment of pure food laws is within the police powers of the states.¹⁹¹ Accordingly statutes designed to prevent the

¹⁸⁴ *South Covington etc. Ry. Co. v. Berry*, 93 Ky. 40, 40 Am. St. Rep. 161, 18 S. W. 1026, 15 L. R. A. 604.

¹⁸⁵ *St. Louis v. St. Louis R. R. Co.*, 89 Mo. 44, 58 Am. Rep. 82, 1 S. W. 305.

¹⁸⁶ *Ohio Oil Co. v. Indiana*, 177 U. S. 203, 20 S. Ct. 576, 44 L. ed. 729; *Townsend v. State*, 147 Ind. 624, 62 Am. St. Rep. 477, 47 N. E. 19, 37 L. R. A. 294.

¹⁸⁷ *Holden v. Hardy*, 169 U. S. 395, 18 S. Ct. 383, 42 L. ed. 780; *St. Louis Consolidated Coal Co. v. Illinois*, 185 U. S. 207, 22 S. Ct. 616, 46 L. ed. 872.

¹⁸⁸ *South etc. Ry. Co. v. Morris*, 65 Ala. 193; *Denver etc. Ry. Co. v. Davidson*, 2 Colo. App. 443, 31 Pac. 181; *Wadsworth v. Union Pacific Ry. Co.*, 18 Colo. 600, 36 Am. St. Rep. 309, 33 Pac. 515, 23 L. R. A. 812; *Joliffe v. Brown*, 14 Wash. 155, 53 Am. St. Rep. 868, 44 Pac. 149.

¹⁸⁹ *Hennington v. Georgia*, 163 U. S. 304, 16 S. Ct. 1086, 41 L. ed. 166; *Ex parte Burke*, 59 Cal. 6, 43 Am. Rep. 231; *State v. Sopher*, 25 Utah, 318, 95 Am. St. Rep. 845, 71 Pac. 482, 60 L. R. A. 468; *People v. Bellet*, 99 Mich. 151, 41 Am. St. Rep. 589, 57 N. W. 1064, 22 L. R. A. 696.

¹⁹⁰ *Eden v. People*, 161 Ill. 296, 52 Am. St. Rep. 365, 43 N. E. 1108, 32 L. R. A. 659; *Bailey v. People*, 190 Ill. 28, 83 Am. St. Rep. 116, 60 N. E. 98, 54 L. R. A. 838.

¹⁹¹ *Plumley v. Massachusetts*, 155 U. S. 468, 15 S. Ct. 154, 39 L. ed. 223.

adulteration of foods or beverages do not deprive of property without due process,¹⁹² and the legislature may require the seller of substitutes and of commodities liable to adulteration to give notice to purchasers of the nature or ingredients of such articles.¹⁹³ Laws to prevent the adulteration or dilution of milk or cream are valid;¹⁹⁴ and milk venders may be compelled to submit their milk to tests for adulteration or disease,¹⁹⁵ and to furnish samples gratuitously to sanitary inspectors.¹⁹⁶ An ordinance requiring the application of the tuberculin test to milk cows is valid.¹⁹⁷ But the legislature cannot forbid or wholly prevent the sale of a wholesome article of food.¹⁹⁸

Laws designed to protect and conserve the supply of fish and game, and prohibiting their taking during certain seasons, do not deprive of liberty or property without due process of law.¹⁹⁹

¹⁹² *Powell v. Pennsylvania*, 127 U. S. 678, 8 S. Ct. 992, 32 L. ed. 253, affirming 114 Pa. St. 265, 60 Am. Rep. 350, 7 Atl. 913; *In re Brosnahan*, 18 Fed. 62; *Ex parte Kohler*, 74 Cal. 38, 15 Pac. 436; *State v. Aslesen*, 50 Minn. 5, 36 Am. St. Rep. 620, 52 N. W. 220.

¹⁹³ *State v. Snow*, 81 Iowa, 642, 47 N. W. 777, 11 L. R. A. 355; *State v. Aslesen*, 50 Minn. 5, 36 Am. St. Rep. 620, 55 N. W. 220; *People v. Girard*, 145 N. Y. 105, 45 Am. St. Rep. 595, 39 N. E. 823; *Stolz v. Thompson*, 44 Minn. 271, 46 N. W. 410; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 22 S. Ct. 120, 46 L. ed. 171, affirming 62 Ohio St. 350, 57 N. E. 62; *Dorsey v. State*, 80 Minn. 446, 81 Am. St. Rep. 268, 83 N. W. 417.

¹⁹⁴ *State v. Fourcade*, 45 La. Ann. 717, 40 Am. St. Rep. 249, 13 South. 187; *State v. Dupaquier*, 46 La. Ann. 577, 49 Am. St. Rep. 334, 15 South. 502, 26 L. R. A. 162.

¹⁹⁵ *State v. Crescent Creamery Co.*, 83 Minn. 284, 85 Am. St. Rep. 464, 86 N. W. 107, 54 L. R. A. 466; *Deems v. Mayor*, 80 Md. 164, 45 Am. St. Rep. 339, 30 Atl. 648, 26 L. R. A. 541; *People v. West*, 106 N. Y. 293, 60 Am. Rep. 452, 12 N. E. 610; *State v. Nelson*, 66 Minn. 166, 61 Am. St. Rep. 399, 68 N. W. 1066, 34 L. R. A. 318.

¹⁹⁶ *State v. Dupaquier*, 46 La. Ann. 577, 49 Am. St. Rep. 334, 15 South. 502, 26 L. R. A. 162.

¹⁹⁷ *State v. Nelson*, 66 Minn. 166, 61 Am. St. Rep. 399, 68 N. W. 1066, 34 L. R. A. 318.

¹⁹⁸ *People v. Marx*, 99 N. Y. 377, 52 Am. Rep. 34, 2 N. E. 29; *People v. Bilsecker*, 169 N. Y. 53, 88 Am. St. Rep. 534, 61 N. E. 990; *Helena v. Dwyer*, 64 Ark. 424, 62 Am. St. Rep. 206, 42 S. W. 1071.

¹⁹⁹ *Smith v. Maryland*, 18 How. 73, 15 L. ed. 269; *State v. Schuman*, 36 Or. 16, 78 Am. St. Rep. 754, 58 Pac. 661; *Allen v. Wyckoff*, 48 N. J. L. 90, 57 Am. Rep. 548, 2 Atl. 659; *American Express Co. v. People*, 133 Ill. 649, 23 Am. St. Rep. 641, 24 N. E. 758, 9 L. R. A. 138; *Ex parte Maier*, 103 Cal. 476, 42 Am. St. Rep. 129, 37 Pac. 402.

Such statutes may forbid the shipment of game during certain parts of the year,²⁰⁰ and may authorize the confiscation and destruction of vessels or devices used in the unlawful taking of fish or game.²⁰¹

The establishment, maintenance, and control of public highways is within the police power,²⁰² and statutes or ordinances may regulate or prohibit the use of bicycles on the streets,^{202a} may regulate or prohibit the driving of cattle except during certain hours,²⁰³ may regulate the weight of loads to be carried.²⁰⁴ The regulation or prohibition of billboards along streets and roads is not a restraint upon the lawful and beneficial use of public property.²⁰⁵ A legislative grant of the right to use streets for telegraph or telephone lines is merely a license revocable in the interest of the public welfare,²⁰⁶ and an ordinance requiring the removal of telegraph and telephone poles from that part of the street used by vehicles,²⁰⁷ or compelling the removal of wires from the surface of the streets to

²⁰⁰ *State v. Chapel*, 64 Minn. 130, 58 Am. St. Rep. 524, 66 N. W. 205.

²⁰¹ *Smith v. Maryland*, 18 How. 73, 15 L. ed. 269; *Lawton v. Steele*, 152 U. S. 138, 14 S. Ct. 501, 38 L. ed. 385; *The Ann*, 5 Hughes, 268, 8 Fed. 926; *Commonwealth v. Manchester*, 152 Mass. 243, 23 Am. St. Rep. 831, 25 N. E. 119, 9 L. R. A. 236.

²⁰² *Jones v. Brim*, 165 U. S. 182, 17 S. Ct. 282, 41 L. ed. 677; *State v. Yopp*, 97 N. C. 477, 2 Am. St. Rep. 305, 2 S. E. 458; *City Council v. Parker*, 114 Ala. 118, 62 Am. St. Rep. 95, 21 South. 452; *Cicero Lumber Co. v. Cicero*, 176 Ill. 9, 68 Am. St. Rep. 155, 51 N. E. 758, 42 L. R. A. 696.

^{202a} *Twilley v. Perkins*, 77 Md. 252, 39 Am. St. Rep. 408, 26 Atl. 286, 19 L. R. A. 632; *State v. Yopp*, 97 N. C. 477, 2 Am. St. Rep. 305, 2 S. E. 458; *State v. Aldrich*, 70 N. H. 391, 85 Am. St. Rep. 631, 47 Atl. 602.

²⁰³ *Jones v. Brim*, 165 U. S. 182, 17 S. Ct. 282, 41 L. ed. 677, affirming 11 Utah, 200, 39 Pac. 325; *Cooper v. Schultz*, 32 How. Pr. 107.

²⁰⁴ *Commonwealth v. Mulhall*, 162 Mass. 496, 44 Am. St. Rep. 887, 39 N. E. 183.

²⁰⁵ *In re Wilshire*, 103 Fed. 620; *Rochester v. West*, 164 N. Y. 510, 79 Am. St. Rep. 659, 58 N. E. 673.

²⁰⁶ *American Rapid Tel. Co. v. Hess*, 125 N. Y. 641, 21 Am. St. Rep. 764, 26 N. E. 919, 13 L. R. A. 454.

²⁰⁷ *Southern Bell Tel. Co. v. Francis*, 109 Ala. 224, 55 Am. St. Rep. 930, 19 South. 1, 31 L. R. A. 193.

underground conduits, is valid.²⁰⁸ An act granting a subway company the right to use its subways for electric wires is not invalid as a confiscation of the easement of a company using the surface of the street.²⁰⁹ A city may regulate the stringing of electric wires,²¹⁰ and may prohibit the stretching of such wires upon roofs of buildings.²¹¹

It is within the police power of the states to prohibit the introduction of paupers or criminals, and to remove from their territory any person whose presence may be deemed injurious.²¹² A city ordinance prescribing the limits outside of which no woman of lewd character shall dwell, and containing the proviso that it gives such women no positive right to live within the limits, is a valid police regulation and does not deprive adjacent owners of property,²¹³ and an ordinance prohibiting prostitutes from being on the streets between certain hours except in instances of reasonable necessity, to be shown by the party charged, is not a deprivation of liberty without due process.²¹⁴

The construction and removal of buildings is a matter of regulation under the police power.²¹⁵ So cities may establish

²⁰⁸ *People v. Squire*, 107 N. Y. 593, 1 Am. St. Rep. 893, 14 N. E. 820.

²⁰⁹ *Western Union Tel. Co. v. New York*, 38 Fed. 552, 3 L. R. A. 449.

²¹⁰ *State v. Janesville etc. Ry. Co.*, 87 Wis. 72, 41 Am. St. Rep. 23, 57 S. W. 970, 22 L. R. A. 759.

²¹¹ *Electric Imp. Co. v. San Francisco*, 45 Fed. 593, 13 L. R. A. 181.

²¹² *Moore v. Illinois*, 14 How. 18, 14 L. ed. 306; *Holmes v. Jennison*, 14 Pet. 568, 10 L. ed. 579; *Lovell v. Selback*, 45 Minn. 465, 48 N. W. 23, 11 L. R. A. 667; *Milwaukee Industrial School v. Supervisors*, 40 Wis. 328.

²¹³ *L'Hote v. New Orleans*, 177 U. S. 596, 20 S. Ct. 788, 44 L. ed. 899.

²¹⁴ *Dunn v. Commonwealth*, 105 Ky. 834, 88 Am. St. Rep. 334, 49 S. W. 813, 43 L. R. A. 701; *Braddy v. Milledgeville*, 74 Ga. 516, 58 Am. Rep. 443.

²¹⁵ *Wilson v. Eureka City*, 173 U. S. 37, 19 S. Ct. 317, 43 L. ed. 603; *Smith v. Milwaukee Bldrs. Exch.*, 91 Wis. 360, 51 Am. St. Rep. 912, 64 N. W. 1041, 30 L. R. A. 504.

fire limits and forbid the erection of wooden buildings therein,²¹⁶ and may even prohibit the alteration, repair or rebuilding of any existing frame building within prescribed limits.²¹⁷ But it is not a proper exercise of the police power to provide for the removal of frame buildings from the fire limits without requiring notice to be given to the owners.²¹⁸ A law requiring the maintenance of fire-escapes is valid.²¹⁹

Danger to the public health is a sufficient ground for the restraint of personal liberty and the regulation of property.²²⁰ So the legislature may enact laws to prevent the spread of infectious or contagious diseases,²²¹ and may provide for the isolation of persons affected with such diseases.²²² Vaccination to prevent the spread of smallpox may be required by law.²²³ A law may provide for the destruction of houses deemed to be unhealthy;²²⁴ for the drainage of lands,²²⁵ or that tenement houses shall be supplied with a certain amount of water.²²⁶ An

²¹⁶ *Kaufman v. Stein*, 138 Ind. 49, 46 Am. St. Rep. 368, 37 N. E. 333; *Wadleigh v. Gilman*, 12 Me. 403, 28 Am. Dec. 188; *City of Salem v. Maynes*, 123 Mass. 372; *Klinger v. Bickel*, 117 Pa. St. 326, 11 Atl. 555.

²¹⁷ *Ex parte Fiske*, 72 Cal. 125, 13 Pac. 310; *McCloskey v. Kreling*, 76 Cal. 511, 18 Pac. 433; *First Nat. Bank v. Searlls*, 129 Ind. 201, 28 Am. St. Rep. 185, 28 N. E. 434.

²¹⁸ *City of Brooklyn v. Franz*, 87 Hun, 54, 33 N. Y. Supp. 869.

²¹⁹ *Cincinnati v. Steinkamp*, 54 Ohio St. 284, 43 N. E. 490.

²²⁰ *Beer Company v. Massachusetts*, 97 U. S. 83, 24 L. ed. 989; *Fertilizing Co. v. Hyde Park*, 97 U. S. 669, 24 L. ed. 1036; *Bowditch v. Boston*, 101 U. S. 18, 25 L. ed. 980; *Morris v. Columbus*, 102 Ga. 792, 66 Am. St. Rep. 243, 30 S. E. 850, 42 L. R. A. 175.

²²¹ *State v. Speyer*, 67 Vt. 502, 45 Am. St. Rep. 832, 32 Atl. 476, 29 L. R. A. 573.

²²² *New York v. Miln*, 11 Pet. 139, 9 L. ed. 648; *State v. New Orleans*, 27 La. Ann. 521; *Haverty v. Bass*, 66 Me. 71; *Cooper v. Schultz*, 32 How. Pr. 107.

²²³ *State v. Hay*, 126 N. C. 999, 78 Am. St. Rep. 691, 35 S. E. 459, 49 L. R. A. 588; *Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383; *Bissell v. Davidson*, 65 Conn. 186, 32 Atl. 348, 29 L. R. A. 251.

²²⁴ *Theilan v. Porter*, 14 Lea, 622, 52 Am. Rep. 173.

²²⁵ *Donnelly v. Decker*, 58 Wis. 461, 46 Am. St. Rep. 637, 17 N. W. 389.

²²⁶ *Health Department v. Rector*, 145 N. Y. 32, 45 Am. St. Rep. 579, 39 N. E. 833.

ordinance regulating the disposition of garbage is valid.²²⁷ The legislature may authorize the destruction of horses affected with glanders without compensation to the owners, but it cannot deprive an owner of the right to be heard as to whether the disease is, in fact, glanders.²²⁸ The abatement of nuisances generally is a proper subject of police regulation,²²⁹ and a statute providing for the abatement, as a nuisance, of a house used for immoral purposes does not deprive the owner of property without due process of law.²³⁰ Cemeteries are subject to reasonable regulation by cities, but they are not to be deemed nuisances *per se* in measuring the extent of the power to regulate them.²³¹

Statutes regulating the keeping of animals in cities are within the police power,²³² and an ordinance may properly prohibit the running at large of animals,²³³ and the impounding and sale of estrays.²³⁴ But it would seem that an ordinance authorizing the summary destruction of unmuzzled dogs or

²²⁷ *Walker v. Jamison*, 140 Ind. 591, 49 Am. St. Rep. 222, 37 N. E. 402, 39 N. E. 869, 28 L. R. A. 679; *State v. Payssan*, 47 La. Ann. 1029, 49 Am. St. Rep. 390, 17 South. 481.

²²⁸ *Miller v. Horton*, 152 Mass. 540, 23 Am. St. Rep. 850, 26 N. E. 100, 10 L. R. A. 116; *Pearson v. Zehr*, 138 Ill. 48, 32 Am. St. Rep. 113, 29 N. E. 854.

²²⁹ *Phalen v. Virginia*, 8 How. 168, 12 L. ed. 1030; *Fertilizing Co. v. Hyde Park*, 97 U. S. 667, 24 L. ed. 1036; *Sweet v. Rechel*, 159 U. S. 398, 16 S. Ct. 48, 40 L. ed. 188; *State v. Heidenhain*, 42 La. Ann. 483, 21 Am. St. Rep. 388, 7 South. 621; *State v. Hord*, 122 N. C. 1092, 65 Am. St. Rep. 743, 29 S. E. 952.

²³⁰ *Carleton v. Rugg*, 149 Mass. 550, 14 Am. St. Rep. 446, 22 N. E. 55, 5 L. R. A. 193.

²³¹ *Los Angeles County v. Hollywood etc. Assn.*, 124 Cal. 344, 71 Am. St. Rep. 75, 57 Pac. 153.

²³² *Wilton v. Weston*, 48 Conn. 325; *Cole v. Hall*, 103 Ill. 30; *Myers v. Dodd*, 9 Ind. 290, 68 Am. Dec. 624.

²³³ *Welch v. Bowen*, 103 Ind. 252, 2 N. E. 722; *Griffin v. Martin*, 7 Barb. 297; *Carter v. Dow*, 16 Wis. 298; *Cochrane v. Frostburg*, 81 Md. 54, 48 Am. St. Rep. 479, 31 Atl. 703, 27 L. R. A. 728; *Wilson v. Beyers*, 5 Wash. 303, 34 Am. St. Rep. 858, 32 Pac. 90.

²³⁴ *Dillard v. Webb*, 55 Cal. 468; *Fort Smith v. Dodson*, 46 Ark. 296, 55 Am. Rep. 589; *Campeau v. Langley*, 39 Mich. 451, 33 Am. Rep. 414; *Wilcox v. Hemming*, 58 Wis. 144, 46 Am. St. Rep. 625, 15 N. W. 435; *Stewart v. Hunter*, 16 Or. 62, 8 Am. St. Rep. 267, 16 Pac. 876.

neglected or abandoned animals would be invalid as depriving the owner of notice and opportunity to be heard in defense of his property.²³⁵

Laws directed to the suppression of gaming are within the police power, and it is not for the courts to say that the measures adopted by the legislature are not appropriate to that end.²³⁶ Bookmaking and pool-selling constitute a form of gambling, and may be regulated or prohibited altogether.²³⁷ A statute declaring grain option contracts to be gambling contracts and the making of them to be a criminal offense does not deprive of liberty or property without due process of law.²³⁸ Statutes providing for the seizure and summary destruction of gambling devices incapable of being put to any legitimate use have been upheld.²³⁹

"Persons" Protected.

The meaning of the word "persons" as used in this amendment is not to be restricted by the definition of the word "citizens" in the first clause. "Person" is to be taken in its broadest significance, and includes all individuals within the United States, regardless of race, color or nationality.²⁴⁰ It therefore

²³⁵ *Loesch v. Koehler*, 144 Ind. 278, 41 N. E. 326, 35 L. R. A. 682; *King v. Hayes*, 80 Me. 206, 13 Atl. 882; *People v. Tighe*, 9 Misc. Rep. 607, 30 N. Y. Supp. 368; *Lynn v. State*, 33 Tex. Cr. 153, 25 S. W. 779. But see *Julienne v. Mayor*, 69 Miss. 34, 30 Am. St. Rep. 526, 10 South. 43; *State v. Topeka*, 36 Kan. 76, 59 Am. Rep. 529, 12 Pac. 810.

²³⁶ *Booth v. Illinois*, 184 U. S. 430, 22 S. Ct. 425, 46 L. ed. 623; *Parker v. Otis*, 130 Cal. 322, 92 Am. St. Rep. 56, 62 Pac. 571, 927.

²³⁷ *State v. Thompson*, 160 Mo. 333, 83 Am. St. Rep. 468, 60 S. W. 1077, 54 L. R. A. 950.

²³⁸ *Booth v. Illinois*, 184 U. S. 430, 22 S. Ct. 425, 46 L. ed. 623, affirming 186 Ill. 43, 78 Am. St. Rep. 229, 57 N. E. 798, 50 L. R. A. 762.

²³⁹ *Board of Police Commrs. v. Wagner*, 93 Md. 182, 86 Am. St. Rep. 423, 48 Atl. 455; *Frost v. People*, 193 Ill. 635, 86 Am. St. Rep. 352, 61 N. E. 1054. But see *Lowry v. Rainwater*, 70 Mo. 152, 35 Am. Rep. 420.

²⁴⁰ *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. ed. 220; *Chy Lung v. Freeman*, 92 U. S. 275, 23 L. ed. 550; *Neal v. Delaware*, 103 U. S. 370, 26 L. ed. 567; *Soon Hing v. Crowley*, 113 U. S. 703, 5 S. Ct. 730, 28 L. ed. 1145.

includes Chinese or Mongolians resident within the United States,²⁴¹ and has been held to extend to alien enemies.²⁴²

While corporations are not "citizens" entitled to privileges and immunities, they are "persons" entitled to due process of law and the equal protection of the laws.²⁴³ But a corporation not created by a state whose laws are complained of nor doing business in the state under the conditions prescribed, is not within the jurisdiction of the state within the meaning of the provision that no state shall "deny to any person within its jurisdiction the equal protection of the laws."²⁴⁴

A nonresident mortgagee of property within a state is not within the jurisdiction of the state within this amendment.²⁴⁵

Equal Protection of the Laws.

The equal protection of the laws means the protection of equal laws.²⁴⁶ This clause was designed to prevent the singling out of any person or class of persons as the special subject of

²⁴¹ *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. ed. 220; *Chy Lung v. Freeman*, 92 U. S. 275, 23 L. ed. 550; *Ho Ah Kow v. Nunan*, 5 Saw. 552, Fed. Cas. No. 6546; *In re Parrott*, 6 Saw. 349, 1 Fed. 481; *Soon Hing v. Crowley*, 113 U. S. 703, 5 S. Ct. 730, 28 L. ed. 1145.

²⁴² *Buford v. Speed*, 11 Bush (Ky.), 338.

²⁴³ *Santa Clara County v. Southern Pacific R. R. Co.*, 118 U. S. 396, 6 S. Ct. 1132, 30 L. ed. 118; *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 189, 8 S. Ct. 737, 31 L. ed. 650; *Smyth v. Ames*, 169 U. S. 522, 18 S. Ct. 418, 42 L. ed. 819; *Minneapolis Ry. Co. v. Beckwith*, 129 U. S. 28, 9 S. Ct. 207, 32 L. ed. 585; *Covington etc. Co. v. Sandford*, 164 U. S. 592, 17 S. Ct. 198, 41 L. ed. 560; *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 78 Am. St. Rep. 17, 59 Pac. 304, 47 L. R. A. 338; *Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 76 Am. St. Rep. 682, 53 S. W. 955, 56 L. R. A. 316.

²⁴⁴ *Blake v. McClung*, 172 U. S. 261, 19 S. Ct. 165, 43 L. ed. 432; *Floyd v. National Loan etc. Co.*, 40 W. Va. 327, 87 Am. St. Rep. 80, 38 S. E. 653, 54 L. R. A. 536; *Hawley v. Hurd*, 72 Vt. 122, 82 Am. St. Rep. 922, 47 Atl. 401, 52 L. R. A. 195.

²⁴⁵ *Sully v. American Nat. Bank*, 178 U. S. 303, 20 S. Ct. 935, 44 L. ed. 1072.

²⁴⁶ *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1070, 30 L. ed. 220; *State v. Cadigan*, 73 Vt. 245, 87 Am. St. Rep. 714, 50 Atl. 1079, 57 L. R. A. 666.

discrimination and hostile legislation,²⁴⁷ and to secure the same protection to all persons in the same place and under like circumstances.²⁴⁸ The phrase "equal protection of the laws" means equal right to resort to the courts for the redress of wrongs and the enforcement of rights, and exemption from unequal burdens or exactions of any kind;²⁴⁹ it implies not only equal accessibility to the courts for the prevention or redress of wrongs and the enforcement of rights, but equal exemption with others of the same class from all charges and burdens of every kind,²⁵⁰ and it guarantees that persons made citizens by the amendment shall be protected by law in the same manner and to the same extent that white citizens are protected.²⁵¹

When the laws operate alike on all persons and property similarly situated, equal protection cannot be said to be denied.²⁵² So special legislation is not obnoxious to this clause, if all persons subject to it are treated alike under the same circumstances.²⁵³

²⁴⁷ *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 188, 8 S. Ct. 737, 31 L. ed. 650; *McPherson v. Blacker*, 146 U. S. 39, 13 S. Ct. 3, 36 L. ed. 860.

²⁴⁸ *Marchant v. Pennsylvania R. R. Co.*, 153 U. S. 389, 14 S. Ct. 894, 38 L. ed. 751; *Magoun v. Illinois etc. Bank*, 170 U. S. 293, 18 S. Ct. 594, 42 L. ed. 1037; *Steed v. Harvey*, 18 Utah, 367, 72 Am. St. Rep. 789, 54 Pac. 1011.

²⁴⁹ *Railroad Tax Cases*, 13 Fed. 722, 18 Fed. 385.

²⁵⁰ *Virginia v. Rives*, 100 U. S. 313, 25 L. ed. 667; *Ex parte Ah Fong*, 3 Saw. 144, Fed. Cas. No. 102.

²⁵¹ *Slaughter-house Cases*, 16 Wall. 36, 21 L. ed. 394.

²⁵² *Wurts v. Hoagland*, 114 U. S. 615, 5 S. Ct. 1086, 29 L. ed. 229; *Duncan v. Missouri*, 152 U. S. 382, 14 S. Ct. 570, 38 L. ed. 485; *Eldridge v. Trezevant*, 160 U. S. 469, 16 S. Ct. 345, 40 L. ed. 490; *Lowe v. Kansas*, 163 U. S. 88, 16 S. Ct. 1031, 41 L. ed. 78.

²⁵³ *Missouri Ry. Co. v. Mackey*, 127 U. S. 209, 8 S. Ct. 1161, 32 L. ed. 107; *Pacific Express Co. v. Seibert*, 142 U. S. 352, 12 S. Ct. 250, 35 L. ed. 1035; *Anglo-American etc. Co. v. Davis etc. Co.*, 160 N. Y. 506, 88 Am. St. Rep. 608, 62 N. E. 587; *Town Council v. Pressley*, 33 S. C. 56, 26 Am. St. Rep. 659, 11 S. E. 545; *Allen v. Pioneer Press Co.*, 40 Minn. 117, 12 Am. St. Rep. 707, 41 N. W. 936, 3 L. R. A. 532; *State v. Garbraski*, 111 Iowa, 496, 82 Am. St. Rep. 524, 82 N. W. 959.

The fact that a law confers upon jury commissioners judicial powers in the selection of citizens for jury service does not conflict with this clause of the amendment,²⁵⁴ and the omission or refusal of such officers to include negro citizens in a list from which jurors might be drawn is not, as to a negro later brought to trial, a denial of the equal protection of the laws;²⁵⁵ but this protection is denied by a law excluding persons of the African race from a grand jury which finds an indictment against a negro.²⁵⁶ So also a statute which excludes negroes from sitting on trial juries because of their color violates the equal protection clause;²⁵⁷ but a law denying to Mongolians the right to serve as jurors has been held to be valid.²⁵⁸ The denial of a motion to quash an indictment against a negro on the ground that all negroes were excluded from the grand jury on account of race or color, without hearing his evidence on that point, denies him equal protection;²⁵⁹ but this is not true of the denial of a motion by a negro that some portion of the trial jury be selected from his own race; the clause does not require a mixed jury in a particular case.²⁶⁰

A statute excluding colored children from the benefits of the public school system, denies them the equal protection of the laws,²⁶¹ but a statute providing for the education of colored children and white children in separate schools is a matter of domestic policy which is within the discretion of the legisla-

²⁵⁴ *Murray v. Louisiana*, 163 U. S. 101, 16 S. Ct. 990, 41 L. ed. 87.

²⁵⁵ *Smith v. State of Mississippi*, 162 U. S. 592, 16 S. Ct. 900, 40 L. ed. 1082.

²⁵⁶ *Carter v. Texas*, 177 U. S. 447, 20 S. Ct. 687, 44 L. ed. 839; *Bush v. Kentucky*, 107 U. S. 117, 1 S. Ct. 625, 27 L. ed. 354.

²⁵⁷ *Strauder v. West Virginia*, 100 U. S. 309, 25 L. ed. 664; *Neal v. Delaware*, 103 U. S. 386, 26 L. ed. 567; *Green v. State*, 73 Ala. 26; *Commonwealth v. Johnson*, 78 Ky. 509.

²⁵⁸ *State v. Ah Chew*, 16 Nev. 50, 40 Am. Rep. 488.

²⁵⁹ *Castleberry v. State*, 69 Ark. 346, 86 Am. St. Rep. 197, 63 S. W. 670.

²⁶⁰ *Virginia v. Rives*, 100 U. S. 313, 25 L. ed. 667.

²⁶¹ *Claybrook v. Owensboro*, 16 Fed. 297; *Davenport v. Cloverport*, 72 Fed. 689; *Ward v. Flood*, 48 Cal. 36, 17 Am. Rep. 405; *Cory v. Carter*, 48 Ind. 327, 17 Am. Rep. 738; *Dawson v. Lee*, 83 Ky. 49; *State v. Duff*, 7 Nev. 342, 8 Am. Rep. 713.

ture.²⁶² Such separate schools must, however, be reasonably accessible for colored children, and must afford substantially equal educational advantages.²⁶³

Other laws which are not repugnant to the equal protection clause are: those prescribing different rates of charges for public services;²⁶⁴ prescribing rules for the protection of railway passengers and employees;²⁶⁵ regulating the use of streets, highways and parks;²⁶⁶ forbidding the erection of frame buildings within prescribed limits;²⁶⁷ classifying property for the purpose of taxation;²⁶⁸ providing for the classification of coal

²⁶² *Cumming v. Board of Education*, 175 U. S. 545, 20 S. Ct. 197, 44 L. ed. 262; *Bertonneau v. Board*, 8 Woods, 177; *Ward v. Flood*, 48 Cal. 36, 17 Am. Rep. 405; *Cory v. Carter*, 48 Ind. 327, 17 Am. Rep. 328; *Lehew v. Brummel*, 103 Mo. 546, 23 Am. St. Rep. 895, 15 S. W. 765, 11 L. R. A. 828; *Dallas v. Fosdick*, 40 How. Pr. 249; *People v. Gallagher*, 93 N. Y. 438, 45 Am. Rep. 232.

²⁶³ *United States v. Buntin*, 10 Fed. 730.

²⁶⁴ *Covington etc. Co. v. Sandford*, 164 U. S. 597, 17 S. Ct. 198, 41 L. ed. 560; *Louisville etc. R. R. Co. v. Kentucky*, 183 U. S. 513, 22 S. Ct. 95, 46 L. ed. 298.

²⁶⁵ *Charlotte etc. R. R. Co. v. Gibbes*, 142 U. S. 394, 12 S. Ct. 255, 35 L. ed. 1051; *New York etc. R. R. Co. v. Bristol*, 151 U. S. 571, 14 S. Ct. 437, 38 L. ed. 269; *New York etc. R. R. Co. v. New York*, 165 U. S. 663, 17 S. Ct. 418, 41 L. ed. 853; *Tullis v. Lake Erie etc. R. R.*, 175 U. S. 348, 20 S. Ct. 136, 44 L. ed. 192; *Chicago etc. R. R. Co. v. Pontius*, 157 U. S. 211, 15 S. Ct. 585, 39 L. ed. 675; *Pittsburgh etc. Ry. v. Montgomery*, 152 Ind. 1, 71 Am. St. Rep. 31, 49 N. E. 582.

²⁶⁶ *Commonwealth v. Abrahams*, 156 Mass. 57, 30 N. E. 79; *Seward v. Beach*, 29 Barb. 239; *Jones v. Brim*, 165 U. S. 182, 17 S. Ct. 282, 41 L. ed. 677, affirming 11 Utah, 200, 39 Pac. 825; *In re Garrahad*, 84 Wis. 585, 54 N. W. 1104, 19 L. R. A. 858.

²⁶⁷ *Ex parte Fiske*, 72 Cal. 125, 13 Pac. 310.

²⁶⁸ *Cincinnati etc. R. R. Co. v. Commonwealth*, 115 U. S. 321, 6 S. Ct. 57, 29 L. ed. 414; *Home Ins. Co. v. New York*, 134 U. S. 594, 10 S. Ct. 593, 33 L. ed. 1025; *Pittsburgh etc. R. R. Co. v. Backus*, 154 U. S. 421, 14 S. Ct. 1114, 38 L. ed. 1031; *Gulf etc. Ry. v. Ellis*, 165 U. S. 155, 17 S. Ct. 255, 41 L. ed. 666; *Adams Express Co. v. Ohio*, 165 U. S. 228, 17 S. Ct. 604, 41 L. ed. 683; *Magoun v. Illinois etc. Bank*, 170 U. S. 294, 18 S. Ct. 594, 42 L. ed. 1037; *Erb v. Morasch*, 177 U. S. 586, 20 S. Ct. 319, 44 L. ed. 897; *W. W. Cargill Co. v. Minnesota*, 180 U. S. 469, 21 S. Ct. 423, 45 L. ed. 619; *Florida Cent. R. R. v. Reynolds*, 183 U. S. 481, 22 S. Ct. 176, 46 L. ed. 283; *Clark v. Titusville*, 184 U. S. 333, 22 S. Ct. 382, 46 L. ed. 568; *Kidd v. Alabams*,

mines for the purpose of regulation;²⁶⁹ imposing a penalty on insurance companies for failure to pay losses promptly;²⁷⁰ restricting and regulating certain trades and businesses in the interest of the public health, morals and safety;²⁷¹ forbidding the carrying on of certain avocations on Sunday;²⁷² forbidding the taking of fish and game during certain seasons.²⁷³ Laws imposing heavier punishment for repeated offenses do not deny the equal protection of the laws.²⁷⁴

The exercise of the police power, to avoid conflict with this clause, must be reasonable and extend only to such laws as are enacted in good faith for the promotion of the public good and not for the oppression of a particular class;²⁷⁵ it must appear that the interests of the public, as distinguished from those of a class, require interference, and that the means adopted are reasonably necessary, and not unduly oppressive on individ-

188 U. S. 730, 23 S. Ct. 401, 47 L. ed. 669; *Farmers' etc. Ins. Co. v. Dabney*, 189 U. S. 301, 23 S. Ct. 565, 47 L. ed. 821.

²⁶⁹ *Consolidated Coal Co. v. Illinois*, 185 U. S. 203, 22 S. Ct. 616, 46 L. ed. 872.

²⁷⁰ *Fidelity etc. Life Assn. v. Mettler*, 185 U. S. 308, 46 L. ed. 922; *Phoenix Ins. Co. v. Levy*, 12 Tex. Civ. App. 45, 33 S. W. 992.

²⁷¹ *Powell v. Pennsylvania*, 127 U. S. 687, 8 S. Ct. 992, 32 L. ed. 253; *Gundling v. Chicago*, 177 U. S. 187, 20 S. Ct. 633, 44 L. ed. 725; *Barbier v. Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. ed. 923; *American Sugar Co. v. Louisiana*, 179 U. S. 95, 21 S. Ct. 43, 45 L. ed. 102; *Capital City Dairy Co. v. Ohio*, 183 U. S. 246, 22 S. Ct. 120, 46 L. ed. 171; *Booth v. Illinois*, 184 U. S. 429, 22 S. Ct. 425, 46 L. ed. 623; *State v. Heinemann*, 80 Wis. 253, 27 Am. St. Rep. 34, 49 N. W. 818; *Campbell v. Cook*, 86 Tex. 630, 40 Am. St. Rep. 878, 26 S. W. 486; *State v. Buchanan*, 29 Wash. 602, 92 Am. St. Rep. 930, 70 Pac. 52, 59 L. R. A. 342; *State v. Fourcade*, 45 La. Ann. 717, 40 Am. St. Rep. 249, 13 South. 187.

²⁷² *State v. Judge*, 39 La. Ann. 132, 1 South. 437; *Lieberman v. State*, 26 Neb. 464, 18 Am. St. Rep. 791, 42 N. W. 419; *People v. Havnor*, 149 N. Y. 195, 52 Am. St. Rep. 707, 43 N. E. 541, 31 L. R. A. 689.

²⁷³ *McCready v. Virginia*, 94 U. S. 391, 24 L. ed. 248; *Bittenhaus v. Johnston*, 92 Wis. 588, 66 N. W. 805, 32 L. R. A. 380.

²⁷⁴ *Moore v. Missouri*, 159 U. S. 677, 16 S. Ct. 179, 40 L. ed. 301; *In re Boggs*, 45 Fed. 475.

²⁷⁵ *Plessy v. Ferguson*, 163 U. S. 550, 16 S. Ct. 1188, 41 L. ed. 256.

uals.²⁷⁶ A legitimate police regulation enforced so as to operate only against one class will be declared void.²⁷⁷ A statute making an arbitrary classification with respect to the subjects over which it operates, based upon no reason suggested by the difference in their situation or circumstances disclosing the propriety of such legislation, is void.²⁷⁸

²⁷⁶ *Lawton v. Steele*, 152 U. S. 137, 4 S. Ct. 499, 38 L. ed. 385.

²⁷⁷ *Soon Hing v. Crowley*, 113 U. S. 711, 5 S. Ct. 730, 28 L. ed. 1145; *Connolly v. Union etc. Co.*, 184 U. S. 553, 22 S. Ct. 431, 46 L. ed. 679.

²⁷⁸ *State v. Sheriff*, 48 Minn. 236, 31 Am. St. Rep. 650, 51 N. W. 112; *State v. Cadigan*, 73 Vt. 245, 87 Am. St. Rep. 714, 50 Atl. 1079, 57 L. B. A. 666; *State v. Montgomery*, 94 Me. 192, 80 Am. St. Rep. 386, 47 Atl. 165; *State v. Ashbrook*, 154 Mo. 375, 77 Am. St. Rep. 765, 55 S. W. 627, 48 L. B. A. 265; *State v. Hinman*, 65 N. H. 103, 33 Am. St. Rep. 22, 18 Atl. 194; *State v. Mitchell*, 97 Me. 66, 94 Am. St. Rep. 481, 53 Atl. 887; *Ballard v. Mississippi etc. Co.*, 81 Miss. 507, 95 Am. St. Rep. 477, 34 South. 533.

SECTION 2.

APPORTIONMENT OF REPRESENTATION.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.

CERTAIN PERSONS DISQUALIFIED FROM HOLDING OFFICE.*

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

The purpose of this section was to create a disability to be made operative by legislation of Congress.¹ The prohibition did not take effect on the day of its adoption so as to vacate all offices and make all official acts by disqualified persons after that day void.²

The expression "engaged in insurrection or rebellion" implies a voluntary effort to assist in insurrection or rebellion, and acts done under compulsion of force or of a well-grounded fear of bodily harm do not come within the operation of this provision.³ The fact that a candidate had previously served in the

¹ *Griffin's Case*, Chase, 364, Fed. Cas. No. 5815; *Powell v. Boon*, 43 Ala. 469.

² *Griffin's Case*, Chase, 364, Fed. Cas. No. 5815.

³ *United States v. Powell*, 65 N. C. 701.

* Participation in insurrection or rebellion, and giving aid to enemies, as disqualification of Senators and Representatives, see notes, ante, pp. 59, 60.

Confederate army, but not voluntarily, does not render him ineligible.⁴ The acceptance of the office of clerk in a court of a state in rebellion does not disqualify,⁵ but it has been held that a person who acted as sheriff in such a state before and during the Rebellion was disqualified.⁶

The courts of a state will enforce the provisions of an act of admission prohibiting persons barred by this article from holding office in the state.⁷

⁴ *Privett v. Stevens*, 25 Kan. 275.

⁵ *Hu'speth v. Carrigues*, 21 La. Ann. 634.

⁶ *Worthy v. Barrett*, 63 N. C. 199.

⁷ *State ex rel. v. Watkins*, 21 La. Ann. 631.

SECTION 4.

PAYMENT OF PUBLIC DEBT NOT TO BE QUESTIONED—REBEL DEBTS NOT TO BE ASSUMED.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5.

ENFORCEMENT OF PROVISIONS.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

Amendment, proposed 18th June, 1866; declared ratified 28th July, 1868.

The federal government should exercise all the powers it has for the protection of the rights of its citizens,¹ and wherein the states do not conform their laws to the requirements of this amendment, Congress is authorized to enforce it by suitable legislation.² But while the amendment was designed to prevent state invasion of equal civil rights, and authorizes Congress to adopt appropriate legislation for correcting the effects of prohibited state laws, it does not authorize direct legislation for the protection of civil rights; corrective legislation is contemplated.³ It has reference to state action exclusively, and not to any action of private individuals; accordingly, sections 1 and 2 of the Civil Rights Act prohibiting the denial of equal accommodations in inns, theaters and conveyances, on account of color, is unconstitutional.⁴ The power of Congress to enforce the Fourteenth Amendment is sufficient to justify the enactment of Revised Statutes, section 641, providing for the removal to federal courts of prosecutions against persons denied equal civil rights.⁵

¹ United States v. Cruikshank, 92 U. S. 549, 23 L. ed. 588.

² United States v. Harris, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290.

³ Civil Rights Cases, 109 U. S. 15, 18, 3 S. Ct. 18, 27 L. ed. 835; Green v. Elbert, 63 Fed. 309.

⁴ Civil Rights Cases, 109 U. S. 18, 3 S. Ct. 18, 27 L. ed. 835.

⁵ Strauder v. West Virginia, 100 U. S. 312, 25 L. ed. 664; California v. Chue Fan, 14 Saw. 578, 42 Fed. 865.

ARTICLE XV.

ELECTIVE FRANCHISE.

SECTION 1.

RIGHT OF CITIZENS TO VOTE.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The Fifteenth Amendment brings the right of United States citizens to vote within the protection of Congress.¹ The right of suffrage, however, is not coextensive with citizenship of the United States,² and this amendment was not designed to confer the right upon anyone.³ It left the power to determine the qualifications of voters with the several states.⁴ The power of Congress to legislate at all upon the subject of voting at state elections rests upon this amendment, and can be exercised only when a qualified voter is denied the right to vote because of race, color or previous condition of servitude,⁵ and it is to

¹ *United States v. Reese*, 92 U. S. 218, 23 L. ed. 563; *United States v. Cruikshank*, 92 U. S. 543, 23 L. ed. 588.

² *Minor v. Happersett*, 21 Wall. 178, 22 L. ed. 627.

³ *Minor v. Happersett*, 21 Wall. 178, 22 L. ed. 627; *United States v. Reese*, 92 U. S. 217, 23 L. ed. 563; *In re Lockwood*, 154 U. S. 117, 14 S. Ct. 1082, 38 L. ed. 929.

⁴ *Minor v. Happersett*, 21 Wall. 178, 22 L. ed. 627; *United States v. Reese*, 92 U. S. 217, 23 L. ed. 563; *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601, 27 L. ed. 290; *Le Grand v. United States*, 12 Fed. 527; *In re Appointment of Supervisors*, 52 Fed. 257; *Gougar v. Timberlake*, 148 Ind. 47, 62 Am. St. Rep. 494, 46 N. E. 341, 37 L. R. A. 644; *Boyd v. Mills*, 53 Kan. 604, 42 Am. St. Rep. 310, 37 Pac. 18, 25 L. R. A. 486.

⁵ *United States v. Reese*, 92 U. S. 218, 23 L. ed. 563; *Ex parte Perkins*, 29 Fed. 906.

this extent only that the power of the states is limited by this clause.⁶ It operates to nullify a provision in a state constitution restricting the right of suffrage to the white race.⁷

Persons who have merely declared their intention to become citizens are not contemplated by this clause.⁸ A state constitutional provision prescribing an educational test for electors is not repugnant to the constitution, although administrative officers may avail themselves of it to discriminate against negroes.⁹

The supreme court, in the exercise of its equitable jurisdiction, will not compel a county board of registrars to enroll a negro under the provisions of a state constitution, where the main object of the bill is to have such provisions declared void as a discrimination against negroes; if the provisions are void the court will not require officials to act under them.¹⁰

⁶ *McPherson v. Blacker*, 146 U. S. 37, 13 S. Ct. 3, 36 L. ed. 869, affirming 92 Mich. 377, 31 Am. St. Rep. 587, 52 N. W. 469, 16 L. B. A. 475; *Van Valkenburg v. Brown*, 43 Cal. 43, 13 Am. Rep. 136.

⁷ *Neal v. Delaware*, 103 U. S. 389, 26 L. ed. 567; *Ex parte Yarbrough*, 110 U. S. 665, 4 S. Ct. 159, 28 L. ed. 274.

⁸ *McKay v. Campbell*, 2 Saw. 129, Fed. Cas. No. 8840; *Hedgman v. State*, 26 Mich. 151.

⁹ *Williams v. Mississippi*, 170 U. S. 220, 18 S. Ct. 583, 42 L. ed. 1012.

¹⁰ *Giles v. Harris*, 189 U. S. 475, 23 S. Ct. 639, 47 L. ed. 909.

SECTION 2.

POWER TO ENFORCE PROVISIONS.

The Congress shall have power to enforce this Article by appropriate legislation.

Amendment, proposed 26th February, 1869; declared ratified 30th March, 1870.

The power given to Congress by this clause may be exercised only when the discrimination forbidden by the preceding clause is attempted.¹ This power can be directed only to the correction of state action; it does not embrace the punishment of individuals acting upon their own responsibility, and not under color of law.² The act of May 31, 1870, providing penalties for depriving a qualified voter of his right to vote, being too general in its terms to be upheld as "appropriate legislation" to prevent discrimination against colored voters, is invalid, and will not warrant the indictment of an inspector for refusing negro votes.³

¹ United States v. Reese, 92 U. S. 218, 23 L. ed. 562; United States v. Amsden, 10 Biss. 283, 6 Fed. 822; United States v. Munford, 16 Fed. 223.

² Le Grand v. United States, 12 Fed. 579; United States v. Amsden, 10 Biss. 283, 6 Fed. 822.

³ United States v. Reese, 92 U. S. 221, 23 L. ed. 563; United States v. Sanges, 48 Fed. 82; State v. Strauder, 11 W. Va. 816, 27 Am. Rep. 619.

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